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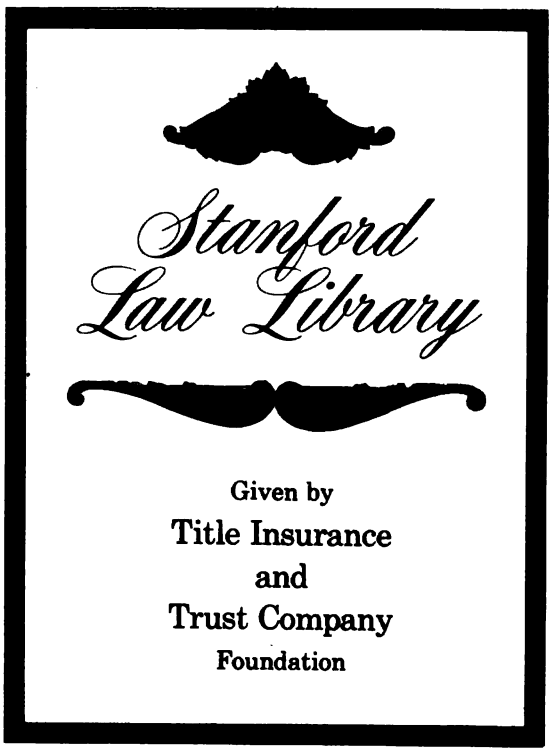
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April 13th 1882.

THE

CONVEYANCING AND LAW OF PROPERTY ACT, 1881,

AND

THE VENDOR AND PURCHASER ACT, 1874,

WITH NOTES; AND FORMS AND PRECEDENTS ADAPTED FOR USE UNDER THE ACTS;

ALSO

THE SOLICITORS' REMUNERATION ACT, 1881.

BY

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TO THE

RIGHT HONOURABLE HUGH McCALMONT EARL CAIRNS

THIS WORK IS RESPECTFULLY

Dedicated

BY THE AUTHORS.

PREFACE

TO THE FIRST EDITION.

In February, 1880, Earl Cairns, then Lord Chancellor, introduced in the House of Lords Bills for three Acts, of which the short titles were to be The Settled Land Act, 1880, The Conveyancing and Law of Property Act, 1880, and The Solicitors Remuneration Act, 1880. The Bills were read a second time in March: but the dissolution of Parliament in the same month stopped their further progress.

On the assembling of the new Parliament in May, 1880, the three Bills, with improvements, were again introduced in the House of Lords by Lord Cairns (who had then ceased to be Lord Chancellor), and were passed through that House and sent down to the House of Commons, but there dropped.

Finally, in January, 1881, the three Bills, with further improvements, were re-introduced by Lord Cairns; and they again, with amendments, passed the House of Lords and went down to the House of Commons, which they reached in February. The Remuneration Bill passed the Commons, with further amendments, and was sent back to the Lords in July. In the meantime the other two Bills had made no progress beyond second reading, except that on the 4th of April the Conveyancing Bill was referred to a Select Committee; but the new Liberal Government being hostile to the Settled Land Bill, and treating the Conveyancing Bill as part of the same scheme, the appointment of the Committee was not

proceeded with. It was not till July, that (through the intervention, as it is believed, of Mr. H. H. Fowler, the Liberal Member for Wolverhampton and a member of firms of solicitors practising in London and Wolverhampton) the Government became informed that the Conveyancing Bill could be treated as distinct from the Settled Land Bill; and on the 6th of July a Select Committee was allowed to be nominated. The Committee, which included several leading Queen's Counsel of the Chancery Bar, besides the Judge Advocate-General and the Attorney-General, and Solicitors of considerable experience, met for the first time to transact business on the 19th of July, and took a favourable view of the Bill; but the time left for considering the Bill was so short that in order to enable it to pass, several clauses not immediately approved by different members of the Committee, or considered likely to give rise to opposition in the House, were struck out. The Bill, as amended by the Select Committee, was returned in August to the Lords, and the amendments were agreed to, after a protest by Lord Cairns against the omission of some clauses, particularly that abolishing acknowledgments by married women, the special object of which was to reduce the cost of title and conveyance. The Conveyancing Bill and Remuneration Bill received the royal assent on the same day, August 22nd. The Settled Land Bill was never allowed to go before a Committee.

The Settled Land Bill not having passed, settlements of land, whether made by deed or by will, must, if complete, still continue of the same length as heretofore. All other documents (except leases, which, on account of their special provisions, cannot be materially reduced in length) may, by the effect of the Conveyancing Act, be brought within comparatively small dimensions. Deeds may be written bookwise with plans interleaved, and supplemental deeds may be annexed to or bound up with

them. The title to an estate can thus be formed into a fairly readable volume of moderate size. The deeds will contain little more than the necessary operative parts, copies may take the place of abstracts, and in many cases it may answer to print deeds. These changes involve some alteration in the mode of fixing the remuneration of Solicitors, which can no longer be made to depend merely on the length of documents. The Remuneration Act is therefore a necessary companion to the Conveyancing Act.

According to amendments made during the progress of the Remuneration Bill, but not originating with Lord Cairns, the body empowered to make Orders under the Act consists of the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and two Solicitors. Perhaps it may occur to some reader to ask how it has happened that, in a matter vitally affecting the interests of a large proportion of the members of the Bar, Solicitors, and Solicitors alone, are associated with these three Judges. The answer is plain. The Bar, unlike the profession of Solicitors, is unorganized; its members have no representative body competent and ready to watch legislative proposals affecting them and to guard their professional rights. The Bar is indeed constituted into three large societies and one smaller society; but all these societies are entirely under the control of a small section of the members, namely, the Masters of the Bench, who are self-elected, and are, with very few exceptions, chosen from one small class exclusively, namely, members of the Inner Bar. At Lincoln's Inn the rule is that no member of the Outer Bar is ever admitted a Bencher (*a*). But more than this, nearly

(*a*) There seem of late years to have been only two exceptions, namely, Lord Macaulay and Lord Eversley. Lord Macaulay had long ceased to have more than a nominal connection with the Bar, and it does not appear by the Law List that Lord Eversley is a member of

one-third of the Benchers of Lincoln's Inn have retired from all active practice of the profession. At the other Inns the proportion of Benchers who have retired is somewhat less, and the Outer Bar is not absolutely excluded (*a*). The most active and prominent members of each Bench, being Queen's Counsel in large practice, have little or no time to spare from their heavy work, and it almost necessarily follows that the direction of affairs falls into the hands of those who have leisure and but little acquaintance with the wants and feelings of the great body of the Profession. It is not surprising therefore that the humbler and more numerous members of the Bar, whose involuntary contributions largely support these four societies, should feel that their material interests are neglected. The time has surely come when an organization adapted to modern exigencies should be established. Other professions of not greater importance have within recent years organized themselves under Royal Charters and Acts of Parliament. Why should not a Bar Association be constituted under public authority, with a governing body truly representative of the Profession, empowered to enforce discipline, to settle authoritatively all matters affecting the practice of the Bar, and generally to keep watch over the interests of

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the Bar. The late V.-C. Wickens was treated as ineligible till he became a Judge. If none but Judges and Queen's Counsel are elected, and if all Judges and Queen's Counsel are elected sooner or later, the Bar, which prides itself on its independence, is, at least at Lincoln's Inn, governed by nominees of the Crown.

(*a*) The reader is referred to an interesting paper by the late Mr. Edward Webster On Promotion at the English Bar, Juridical Soc. Papers, vol. ii. p. 475 (1862), from which it appears (p. 485, n.) that in 1799 the number of Crown Counsel was only fifteen. The majority of the Benchers must then have been of the Outer Bar. The number of Queen's Counsel is now one hundred and eighty-seven. If, consequent on the extinction of Serjeants' Inn, all the Judges of the Queen's Bench Division are to be Benchers, they will displace a corresponding number of members of the Bar.

the members? With such a body in existence, the Remuneration Act would hardly have passed in its present form.

But there are further trials for the Profession in prospect. If the Orders made under the Remuneration Act provide for an *ad valorem* payment, covering all but very exceptional charges, as is now the rule in Scotland, the fees (if any) to Counsel must be paid by the Solicitor out of his own pocket, and will bear no fixed proportion to his own remuneration. The result must be that, unless some special difficulty arises, Counsel will never be consulted, and the Conveyancing branch of the Profession will practically cease to exist. When to this it is added that pleadings no longer require to be signed by Counsel, and can be, and are, drawn by Solicitors; that already a very large proportion of the business, including even more or less of the contentious business, in actions, is transacted in the Judges' Chambers by Solicitors or their clerks; and that the abolition of written or printed pleadings seems imminent,—the business of the Outer Bar is likely soon to be reduced to that of the Advocate alone. There would then remain no means by which the student could learn either the business of conveyancing or the practical conduct of an action, except in a Solicitor's office. The claim of Solicitors to be admitted to the Bar, immediately on ceasing to practise as Solicitors, must then be conceded, and the two professions would be practically amalgamated. In the end the public might benefit. Young men, after practising as Solicitors, would come to the Bar more or less trained in the conduct of litigation, having done useful work, received pay and gained experience, during years when, if commencing their work at the Bar, they might have remained without income or the means of properly learning their business.

The Bar ought not to oppose any obstacle in the way

of reforms required for the benefit of the public, but they are entitled to use all legitimate means in order to prevent unnecessary prejudice to their Profession by the great changes that seem inevitable. To meet effectively on the part of the Bar these changes, it is clear something more is wanted than government by Masters of the Bench, who have little present interest of a material kind in what concerns the mass of the Profession. What immediately presses is the position of those whose business is wholly or mainly conveyancing. If anything is to be done, it would seem that they must act for themselves, and promptly.

LINCOLN'S INN,
December, 1881.

PREFACE

TO THE SECOND EDITION.

THE Authors have, by means of additional Notes and Precedents, endeavoured in this Edition to give more complete explanation as to the manner in which the Conveyancing Act, 1881, can be applied in practice. The useful and carefully written works of Mr. Aubrey St. John Clerke and Mr. Thomas Brett, and of Mr. W. Manning Harris and Mr. Thomas Clarkson, will be found to supply numerous references to decisions on the law affected by the Acts of 1874 and 1881. The object of this work is to assist the draughtsman rather than to discuss legal points.

LINCOLN'S INN,
March, 1882.

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ADDENDUM.

Page 81. Add to notes on C. A., s. 39, *Tamplin* v. *Miller*, W. N. 1882, p. 44.

VENDOR AND PURCHASER ACT

AND

CONVEYANCING AND LAW OF PROPERTY ACT.

PART I.

CHAPTER I.

GENERAL EFFECT OF THE VENDOR AND PURCHASER ACT, 1874, AND CONVEYANCING AND LAW OF PROPERTY ACT, 1881 (*a*).

Effect of V. & P. A. and C. A. on form and contents of documents.

For convenience of draughtsmen the following short statement is given of the manner in which the V. & P. A. and the C. A. affect the form and contents of various documents.

Contracts.

(1.) Contracts for sale need not contain conditions as regards title and evidence of title except in special cases, as where the title is less than forty years, or where deeds abstracted cannot be produced, &c.: C. A. s. 3. An open contract may be safely made in case of an ordinarily good forty years title, but it is advisable to state the date of commencement, see p. 15 (*b*).

Abstracts.

(2.) Abstracts of title commence—

(*a*) As to freeholds with a document at least forty years old: V. & P. A., s. 1.

(*b*) As to leaseholds with the lease or underlease: V. & P. A., s. 2, and C. A., s. 3 (1).

(*a*) In the following pages the letters C. A. refer to the Conveyancing and Law of Property Act, 1881; the letters V. & P. A. refer to the Vendor and Purchaser Act, 1874.

the character in which a person conveys the proper covenant by him is incorporated: C. A., s. 7.

Covenant to produce deeds.

(7.) A covenant for production of deeds is no longer required. A mere acknowledgment as defined by the Act gives the proper title to production and delivery of copies, and a mere undertaking gives the proper remedy in case of destruction or damage: C. A., s. 9.

Powers conferred on mortgagors and mortgagees.

(8.) In a mortgage by *deed* there are supplied

(*a*) Power for mortgagor and mortgagee when in possession to grant leases: C. A., s. 18. In some cases it may be necessary to vary this power; but it is conceived that the power ought not in any case to be entirely negatived.

(*b*) Power for mortgagee to sell and to insure against fire, and when in possession to cut and sell timber: C. A., ss. 19, 23.

(*c*) Power for mortgagee to appoint a receiver: C. A., ss. 19, 24.

(*d*) Power for mortgagee to give a receipt for sale money and other money comprised in the mortgage and trusts for application thereof: C. A., s. 22.

Devise of trust and mortgage estates.

(9.) In a will a devise of trust and mortgage estates is not required and should not be inserted. It is practically inoperative if inserted: C. A., s. 30.

Appointment of new trustees.

(10.) As to appointments of new trustees,

(*a*) A power to appoint is only required where it is to be exercised otherwise than by the trustees or trustee for the time being: C. A., s. 31 (1).

(*b*) The original number of trustees need not be preserved, except that where there were originally two or more, one cannot be discharged unless two places at least be full: *ib.* (3).

(*c*) An appointment of new trustees should contain the proper declaration as to vesting: C. A., s. 34 (see Precedents, *post*); and where there are more than two trustees, and one simply retires and his place is not filled up, there

must be a deed of consent to his discharge and to the vesting of the trust property in his co-trustees: C. A., s. 32 (see Precedents, *post*).

(11.) Deeds may be supplemental or annexed instead of indorsed, and will be read as indorsed on the principal deed: C. A., s. 53. Supplemental deeds.

CHAPTER II.

THE VENDOR AND PURCHASER ACT, 1874, 37 & 38 VICT. c. 78.

SS. 1, 2.

An Act to amend the Law of Vendor and Purchaser, and further to simplify Title to Land. [7th August, 1874.]

WHEREAS it is expedient to facilitate the transfer of land by means of certain amendments in the law of vendor and purchaser:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Forty years substituted for sixty years as the root of title.

1. In the completion of any contract of sale of land made after the thirty-first day of December one thousand eight hundred and seventy-four, and subject to any stipulation to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the present period of such commencement; nevertheless earlier title than forty years may be required in cases similar to those in which earlier title than sixty years may now be required.

Definition of "land" in Acts of Parliament.

The word "land" in Acts of Parliament includes messuages, tenements and hereditaments, houses and buildings of every tenure (13 & 14 Vict. c. 21, s. 4), unless its meaning is restricted.

Rules for regulating obligations and rights of vendor and purchaser

2. In the completion of any such contract as aforesaid, and subject to any stipulation to the contrary in the contract, the obligations and rights of vendor and purchaser shall be regulated by the following rules; that is to say,

First. Under a contract to grant or assign a term of

years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold.

Rule that lessee has notice of lessor's title not altered.

The rule that a lessee has constructive notice of his lessor's title has not been altered by this section. He is now in the same position with regard to notice as if he had before this Act stipulated not to inquire into his lessor's title (*Patman* v. *Harland*, 17 Ch. D. 353, 358).

Second. Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

Effect of recital twenty years old.

In *Bolton* v. *London S. Board*, 7 Ch. D. 766, a recital in a deed more than twenty years old that a vendor was seised in fee simple was held sufficient evidence of that fact, precluding the purchaser from demanding a prior abstract, except so far as the recital was proved to be inaccurate. The decision seems open to question, as it in effect negatives the recognised right of a purchaser to a proper abstract of title extending over forty years, which might shew the recital to be inaccurate.

Third. The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

Purchaser's equitable right to production of documents.

As to the purchaser's equitable right to production of documents, see Sug. V. & P. c. 11, s. 5, 14th ed.; Dart, 143, 5th ed.

Fourth. Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

Fifth. Where the vendor retains any part of an estate

SS. 2, 3, 4, 5.

to which any documents of title relate he shall be entitled to retain such documents.

Contracts for sale, where the vendor retains any documents, should now provide for giving an acknowledgment in writing of the right of the purchaser to the production, and delivery of copies under C. A. s. 9, and, where he is beneficial owner, also an undertaking for safe custody (see Special Conditions of Sale, *post*). But the liability to give the covenant under s. 2, r. 4 of this Act is satisfied by an acknowledgment (C. A. s. 9 (8)).

As to the costs of attested and other copies of documents retained by the vendor, see C. A. s. 3 (6), *post*.

Trustees may sell, &c., notwithstanding rules.

3. Trustees who are either vendors or purchasers may sell or buy without excluding the application of the second section of this Act.

Legal personal representative may convey legal estate of mortgaged property.

4. *The legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust.*

Repealed and superseded by s. 30 of the C. A. as to deaths happening after 1881. This section did not apply to a transfer of mortgage (*Re Spradbery's Mortgage*, 14 Ch. D. 514).

Bare legal estate in fee simple to vest in executor or administrator.

5. *Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in the legal personal representative from time to time of such trustee.*

Repealed as to England on and after the 1st January 1876, by the Land Transfer Act 1875, s. 48, except as to anything duly done thereunder before that date, and re-enacted by the same section with an amendment confining its operation "to a bare trustee dying intestate," which section has in turn been repealed by the C. A., s. 30, in case of deaths occurring after 1881. It would seem therefore that where nothing had been done under this section before the 1st January 1876, the hereditament of a bare trustee dying testate, and vested in his personal representative solely by force of this section, became divested and devolved as if the V. & P. A. had not been passed. Thus, up to the 1st of January 1882, where nothing had been done under this repealed section before the 1st of January 1876, the devise by a bare trustee of his trust estate is operative.

Repealed as to Ireland by the C. A., s. 73, in case of deaths happening after 1881. SS. 5, 6, 7, 8.

As to the meaning of "bare trustee," see *Christie* v. *Ovington*, 1 Ch. D. 279; *Morgan* v. *Swansea U.S. Authority*, 9 Ch. D. 582; and p. 137 (*a*), *post*. There is no distinction between the cases of a bare trustee and any other trustee dying after 1881. Meaning of "bare trustee."

6. When any freehold or copyhold hereditament shall be vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a feme sole. Married woman who is a bare trustee may convey, &c.

7. *After the commencement of this Act, no priority or protection shall be given or allowed to any estate, right, or interest in land by reason of such estate, right, or interest being protected by or tacked to any legal or other estate or interest in such land; and full effect shall be given in every court to this provision, although the person claiming such priority or protection as aforesaid shall claim as a purchaser for valuable consideration and without notice: Provided always, that this section shall not take away from any estate, right, title, or interest any priority or protection which but for this section would have been given or allowed thereto as against any estate or interest existing before the commencement of this Act.* Protection and priority by legal estates and tacking not to be allowed.

Repealed as to England by The Land Transfer Act, 1875, s. 129, and as to Ireland by the C. A., s. 73. The effect of this section was to prevent a first mortgagee from being safe in making a further advance, his security for which became under this section postponed to all intermediate mortgages; as to which, consider *Pease* v. *Jackson*, 3 Ch. App. 576.

8. Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by some one deriving title under him shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law. Non-registration of will in Middlesex, &c., cured in certain cases.

As to the time allowed for the registration of wills in Middlesex, see 7 Anne, c. 20, ss. 8–10; in the W. Riding of Yorkshire, 2 & 3 Anne, c. 4, ss. 20, 21; and 6 Anne, c. 35, s. 34; in the E. Riding, 6 Anne, c. 35, ss. 14, 15; and in the N. Riding, 8 Geo. 2, c. 6, ss. 15–17. Time for registration of wills in Middlesex and Yorkshire.

SS. 9, 10.

Vendor or purchaser may obtain decision of judge in chambers as to requisitions or objections, or compensation, &c.

9. A vendor or purchaser of real or leasehold estate in England, or their representatives respectively, may at any time or times and from time to time apply in a summary way to a judge of the Court of Chancery in England in chambers, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

A vendor or purchaser of real or leasehold estate in Ireland, or their representatives respectively, may in like manner and for the same purpose apply to a judge of the Court of Chancery in Ireland, and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

Position of parties under this s.

In proceedings under this section the parties are in the same position as under a reference as to title in an action for specific performance, and accordingly evidence by affidavit is admissible (*Re Burroughs, &c.*, 5 Ch. D. 601).

Instances of application under this s.

For further instances of applications under this section, see *Re Coward & Adams' Purchase*, L. R. 20 Eq. 179; *Christie* v. *Ovington*, 1 Ch. D. 279; *Re Brown & Sibly's Contract*, 3 *ib.* 156; and cases cited Clerke & Brett, Conv. A. 188, and Harris & Clarkson, Conv. A. 185–188.

Extent of Act.

10. This Act shall not apply to Scotland, and may be cited as the Vendor and Purchaser Act, 1874.

CHAPTER III.

CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

44 & 45 VICT. c. 41.

An Act for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees, and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes.

[22nd August, 1881.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I.—PRELIMINARY.

PRELIMINARY.

Short title; commencement; extent.

1.—(1.) This Act may be cited as the Conveyancing and Law of Property Act, 1881.

(2.) This Act shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-one.

(3.) This Act does not extend to Scotland.

Interpretation of property, land, &c.

2. In this Act—

(i.) Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property, real or personal, and any debt, and anything in action, and any other right or interest:

(ii.) Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments,

S. 2. PRELIMINARY.

corporeal or incorporeal, and houses and other buildings, also an undivided share in land:

(iii.) In relation to land, income includes rents and profits, and possession includes receipt of income:

(iv.) Manor includes lordship, and reputed manor or lordship:

Reputed manor.

Where all the freehold estates held of a lord are purchased by or devolve on him by escheat, whereby the services become extinct, the manor ceases to exist; also, there cannot be a manor without a court baron; and no court baron can be without two freeholders as suitors at least. In case there be not two suitors the manor becomes a reputed manor, or manor in reputation; and continues to have certain rights and franchises which were appendant to the manor (1 Cruise, Dig. p. 34), as the right to wrecks, estrays, &c., 1 Watk. Cop. 27; and the right to appoint a sexton of a parish, *Soane* v. *Ireland*, 10 East, 259; and if there be but one free tenant the seigniory as to him remains with respect to his services, though there can be no court held: 1 Watk. Cop. 27.

(v.) Conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement, and other assurance, and covenant to surrender, made by deed, on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance:

(vi.) Mortgage includes any charge on any property for securing money or money's worth; and mortgage money means money, or money's worth, secured by a mortgage; and mortgagor includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right, in the mortgaged property; and mortgagee includes any person from time to time deriving title under the original mortgagee; and mortgagee in possession is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property:

(vii.) Incumbrance includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or

annual sum; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof:

(viii.) Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property; and purchase, unless a contrary intention appears, has a meaning corresponding with that of purchaser; but sale means only a sale properly so called:

(ix.) Rent includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(x.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for building purposes or purposes connected therewith:

(xi.) A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes:

(xii.) Will includes codicil:

(xiii.) Instrument includes deed, will, inclosure award, and Act of Parliament:

(xiv.) Securities include stocks, funds, and shares:

(xv.) Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy; and bankrupt has a meaning corresponding with that of bankruptcy:

(xvi.) Writing includes print; and words referring to any instrument, copy, extract, abstract, or other document include any such instrument, copy, extract, abstract, or other document being in writing or in print, or partly in writing and partly in print:

SS. 2, 3 (1), (2), (3).

(xvii.) Person includes a corporation:

(xviii.) Her Majesty's High Court of Justice is referred to as the Court.

SALES AND OTHER TRANSACTIONS.

II.—SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

Contracts for Sale.

Application of stated conditions of sale to all purchases.

3.—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

Title to underlease.

This is supplementary to s. 2, rule 1, of the Vendor and Purchaser Act, 1874 (*ante*), and (following that Act) does not apply to a lease for lives. It places the title to an underlease, in regard to shewing the lessor's title, on the same footing as the title to a lease from the freeholder (see also s. 13 of this Act, *post*), and the underlessee has in like manner constructive notice of his underlessor's title (*Patman* v. *Harland*, 17 Ch. D. 353).

How far objections, &c., are precluded.

This and subs. 3 preclude the purchaser from calling for or making any requisition, objection, or inquiry as to the underlessor's title, as between vendor and purchaser, but it does not alter the rule enabling the purchaser to prove the title to be defective *aliunde* (see note (*a*) to subs. 3).

Title to enfranchised copyholds.

(2.) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

Under this subs. the title to the freehold of enfranchised copyholds is placed on the same footing as the title to a lease, and commences with the deed of enfranchisement. This subs. should be read in connection with subs. 3, under which a purchaser is precluded from requiring production of documents recited in the enfranchisement deed, and is bound to assume the correctness of the recitals.

Meaning of purchaser in this s.

The word "purchaser" in this and the subsequent subss. of this section means (notwithstanding the definition clause) a purchaser on a sale only (see subs. 8).

The following subss. 3, 6, 7, are not confined to land.

(3.) A purchaser of any property shall not require the production (*a*), or any abstract or copy, of any deed, will,

S. 3 (3).

SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

or other document, dated or made before the time prescribed by law (*b*), or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; nor shall he require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, covenanted to be produced, or noticed; and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will, or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise.

Production of documents recited or noticed prior to commencement of title.

(*a*) Notice of a document being notice of all its contents (Sug. V. & P. 775, 14th ed.), a purchaser would, but for this sub-section, be entitled on an open contract to require the production of all documents recited or noticed. But this clause will not protect the vendor where a defect in the prior title appears on the face of the abstract (*Sellick* v. *Trevor*, 11 M. & W. 722; Dart, 152, 5th ed.), nor affect the purchaser's right to object to the earlier title if he can shew it to be defective *aliunde* (*Darlington* v. *Hamilton*, Kay, 550, and cases cited at p. 558; *Waddell* v. *Wolfe*, L. R. 9 Q. B. 515; *Harnett* v. *Baker*, L. R. 20 Eq. 50; *Jones* v. *Clifford*, 3 Ch. D. 779; *Broad* v. *Munton*, 12 Ch. D. 131; or where the defect is accidentally disclosed by the vendor; *Smith* v. *Robinson*, 13 Ch. D. 148). This right he retains under subs. 11, and if intended to be precluded it must be expressly provided for (*Hume* v. *Bentley*, 5 De G. & S. 520).

(*b*.) That is, forty years, except where an earlier title than sixty years would have been required before the V. & P. A. See s. 1 of that Act.

Contract should still fix date for commencement of title.

It is still advisable to provide expressly in all contracts as to the date at which the title is to commence. The V. & P. Act leaves it open to require an earlier title than forty years in cases similar to those in which an earlier title than sixty years could previously have been required. Thus where the first abstracted deed is a conveyance under a trust for sale, or under a power, or the bar of an entail, the vendor is entitled to production, if not to an abstract, of the deed creating the trust or power or estate tail, and it may be said that the date of this

S. 3 (4), (5), (6).

deed is the time prescribed by law for commencement of the title (see *Parr* v. *Lovegrove*, 4 Drew. 170).

SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

(4.) Where land sold is held by lease (not including under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(5.) Where land sold is held by under-lease the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

This subs. covers breaches after the contract and up to completion, see *Laurie* v. *Lees*, 14 Ch. D. 249.

Lease at a nominal rent.

These two subs. do not provide for the exceptional case of a lease at a nominal rent containing covenants. In such a case it should be expressly provided that the mere fact of possession at the time of completion of the purchase is to be sufficient evidence of performance.

(6.) On a sale of any property, the expenses (*c*) of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the vendor's

possession, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

S. 3 (6), (7), (8), (9), (10), (11).

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(c) As to the expense of producing documents and of attested copies which, but for this clause, would be borne by the vendor, see Dart, 143, 407, 5th ed. This subs. alters the rule as to the expense of journeys established by *Hughes* v. *Wynne*, 8 Sim. 85.

Expenses of producing documents.

Subs. 6 only relates to the expenses in reference to documents which the vendor has not in his possession, but of which he can procure the production. If, however, there are any of which he cannot procure the production he must protect himself against production by a special condition.

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(8.) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this Act.

(9.) This section applies only if and as far as a contrary intention is not expressed in the contract of sale, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(10.) This section applies only to sales made after the commencement of this Act.

A sale is made when there is a complete contract for sale. The purchase-money then becomes personal estate of the vendor, and the land then becomes real estate of the purchaser.

Meaning of "sale made."

(11.) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case

S. 3 (11); S. 4.

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where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the Court.

Effect of an open contract since the Act.

Under this section, taken in connection with the V. & P. A., and in particular ss. 1 and 2 of that Act, *ante*, a vendor having a title such as is usually accepted by a willing purchaser, may safely enter into an open contract for sale, without fear of being put to undue expense in answering requisitions or furnishing evidence. At the same time the purchaser will not incur more risk than in buying under suitable conditions of sale, since subs. 11 reserves to him every defence in an action for specific performance: see note (*a*) to subs. 3 of this s.

Trustees protected.

Trustees may buy or sell under contracts within this section, see s. 66, *post*, and as to contracts under the V. & P. A., s. 2, see s. 3 of that Act.

See precedents of conditions of sale made applicable to this and the V. & P. A., *post*.

Completion of contract after death.

4.—(1.) Where at the death of any person there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest, descendible to his heirs general, in any land, his personal representatives shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

(2.) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition or as heir or next of kin of a testator or intestate.

(3.) This section applies only in cases of death after the commencement of this Act.

This section should be read in connection with s. 30, and seems not to be rendered unnecessary by that section, as a vendor who has contracted to sell is not a trustee unless the contract is valid and binding on *both* parties at his death (*Lysaght* v. *Edwards*, L. R. 2 Ch. D. 506). If the title be not accepted in the vendor's lifetime, and be not such as he could have enforced, he is not, it seems, a trustee, though after his death the purchaser should accept the title, nor would the vendor be a trustee where the contract is not signed by, and so is not enforceable against, the purchaser.

S. 4 (3); S. 5 (1).

SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

The section applies to all cases where there is a contract "enforceable against the heir or devisee," that is at least to all cases where there is a clear written contract signed by the deceased vendor. The purchaser may then waive all objections and insist on performance, and an action will not now be required merely to obtain the legal estate where the vendor has died, having devised the land in settlement or otherwise in such manner that no conveyance can be obtained. But if there is any doubt whether a contract binding on the vendor subsisted at his death, an action will still be necessary. This might happen in case of a parol contract and alleged part performance. Matters are in fact placed in the same position as if there was a devise of the fee to trustees.

Case where action may still be necessary.

Where the legal estate is outstanding at the time of the vendor's death, the aid of this section is not required. The person in whom it is outstanding can convey, and the personal representative can give a discharge for the purchase-money. This makes a complete title.

This s. not required where legal estate is outstanding.

The section does not apply to a contract by a tenant in tail which by his death becomes incapable of being enforced. Nor does it apply to copyholds.

Does not apply to tenant in tail.

It applies, however, to an estate *pur autre vie* where it would devolve on the heirs general as special occupants, which is a *quasi* descent: Burton, p. 295, *D.* d. *Hunter* v. *Robinson*, 8 Barn. & Cr. 296. But if the executors or administrators take as special occupants the aid of this section is not required. Leaseholds for lives devised in settlement are usually vested in trustees, in which case also a conveyance can be made independently of this section.

Estates *pur autre vie.*

The section does not apply to the peculiar case of the vendor having a power of appointment which he does not exercise, the property being settled in default of appointment, a case rather difficult to provide for generally: see *Morgan* v. *Milman*, 3 D. M. & G. 24; Fry on Specific Perf., 2nd ed. p. 68.

Discharge of Incumbrances on Sale.

Discharge of Incumbrances on Sale.

5.—(1.) Where land subject to any incumbrance (*b*), whether immediately payable or not, is sold by the Court, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any

Provision by Court for incumbrances, and sale freed therefrom.

S. 5 (1), (2), (3), (4).

SALES AND OTHER TRANSACTIONS.

Discharge of Incumbrances on Sale.

other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason think fit to require a larger additional amount.

This section is confined to cases of sales only.

(2.) Thereupon, the Court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the Court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(3.) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4.) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made.

How application to Court made.

Facilities given for sale of encumbered estates.

(*b*) See definition of incumbrance, s. 2 (vii). Under s. 69, subs. (3) the application to the Court will be by summons; subss. (4), (5), and (6) provide for the notices to be given; subs. (7) provides for costs. This section greatly facilitates sales of encumbered estates, especially when taken in connection with ss. 15, 16, and 25. It applies to ordinary sales, as well as sales by the Court. Suppose the estate for sale to be certain to produce, say, £100,000, but to be subject to (1) a jointure of £300 per annum, (2) £20,000 for portions for younger children under age, and therefore not yet raisable, (3) a first mortgage for £50,000 (all of which will certainly be paid out of the proceeds of sale), and (4) a second mortgage for £20,000, which may or may not be paid according to the price obtained. Before this Act the owner could not himself safely institute any proceeding for a sale; he might bring an action for redemption against the last mortgagee, but was liable to be

absolutely foreclosed if the money was not paid at the day fixed, there being usually no enlargement of time in a redemption action (Dan. Ch. Pr. 861, 5th ed.). Even were a person found willing to make the required advance the owner could not be certain that the first mortgagee would consent to produce the deeds or to transfer, he might insist on reconveying. Again in an action of foreclosure a mortgagee could only obtain a sale free from the jointure if the jointress consented to release, and must necessarily sell without any release of the portions and subject to depreciatory conditions as to indemnity or as to leaving them a charge.

Mode of proceeding to obtain sale.

Under this section and ss. 15, 16, and 25, the course will be simple. If an advance can be obtained to pay off the mortgages the mortgagee, assuming his mortgage to be subsequent to the Act, can be required to produce the deeds (s. 16). Whether his mortgage is subsequent to the Act or not, he can be required to transfer (s. 15). If a sale is desired, the owner can bring an action for sale (s. 25), in which the only necessary defendant would be the last mortgagee, he being the only one not certain to be paid in full, and whom it is therefore necessary to bind by the judgment for sale. The sale being made, there will be set apart (1) £10,000 and an additional 10 per cent., making £11,000 in consols to answer the jointure; (2) £22,000, including the additional 10 per cent., to answer the portions; and (3) £55,000, also including the 10 per cent., to answer the first mortgage, making a total of £88,000. The estate will thereby be cleared from all charges except the money due to the second mortgagee, and he, if not paid in full, will, as defendant, be bound by the sale. In the case of a sale out of Court, the owner can, when the contracts are signed, and on the faith of the incoming purchase-money, generally procure a temporary advance of the amount required to be paid into Court to answer the charges, and thus at once obtain a conveyance or vesting order (s. 5, subs. 2). By s. 69, subs. 7, the Court can direct by whom the costs of any application are to be paid.

Costs of application.

Effect of s. 5 on rights of incumbrancers.

By the operation of this section, the jointress and the children entitled to portions suffer no substantial injury. They have the same security which the Court considers proper in cases of annuities and legacies payable out of personalty, with a further margin of 10 per cent. The mortgagees suffer no injury. They are always bound to accept payment on six months notice. The margin of 10 per cent. and the dividends or interest on the sum paid into Court, are ample to provide the amount due and costs. The deposit in Court and the security for costs which may be required from the plaintiff under s. 25, subs. 3, prevent the costs of a sale falling on the defendant mortgagee unless he consents. If the deposit and security are not provided, the Court can allow the action to proceed to foreclosure in the usual way.

As to notice to incumbrancer.

The Court will take care that so far as possible a mortgagee whose charge is to be provided for by payment into Court has due notice (see s. 69 (6)) before the land is declared under subs. 2 to be freed

S. 5; S. 6 (1), Sales and other Transactions. *Discharge of Incumbrances on Sale.*

from his incumbrance. If he be absent there will generally be an agent who receives his interest upon whom notice can be served. Upon receipt of notice the mortgagee will have an opportunity of shewing the amount due, and whether he has any right of consolidation in respect of a mortgage on other property. If a mortgagee cannot be found he has no valid reason to complain that some unknown equity or further advance has been disregarded. The purpose of the section is to facilitate the sale of incumbered estates, and a sale should not be prevented by the mere fact that a mortgagee cannot be found, hence the necessity for giving the Court power to act without notice to the incumbrancer. The Court will, no doubt, in every case where a mortgagee does not appear, require an affidavit as to the amount due to him, and negativing any other claim than what appears on his security. Where that security cannot be produced there may in some cases be difficulty, but the receipt for interest will generally shew what is due.

As to mortgages for a time certain.

Where the mortgage contains an agreement that the money shall remain for a fixed period, the Court will probably think there is special reason for requiring a larger amount beyond the margin of 10 per cent. so as to secure the mortgagee his full interest during the fixed period, or give him the proper amount of damages on payment off.

What incumbrances included.

A capital sum or an annuity payable out of rents and profits or a capital sum charged on a reversionary interest are within this section (see s. 2 (vii.)). An annual sum charged on a determinable interest in land is also within this section. If a tenant for life of land charge the land with an annuity it is not the less, while subsisting, a charge on the land, because the charge determines with his estate. If he charge the land with a gross sum it is also a charge on the land, but not in the ordinary sense in which a gross sum is said to be a charge. An annual sum whether terminable or otherwise charged on land, and a capital sum charged on a determinable interest in land, constitute the two cases where a capital sum could not be or might not properly be applied out of the proceeds of sale in discharge of the incumbrance. In the one case the annuitant is entitled to have payment of the annual sum continued to him, in the other case, capital money should not be applied in payment of the charge to the prejudice of the remainderman. Therefore this section provides for the application of dividends only in payment. An annual sum is a charge on land, though rents and profits only, and not the corpus of the land, can be resorted to for payment. A rent-charge recoverable only by distress is clearly a charge on land within the ordinary meaning of that term.

General Words.

General Words.

General words in conveyances of land, buildings, or manor.

6.—(1.) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons,

S. 6 (1), (2), (3), (4).

SALES AND OTHER TRANSACTIONS.

General Words.

hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2.) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

(3.) A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quit-rents, rentscharge, rents seck, rents of assize, fee-farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

(4.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and

S. 6 (4), (5), (6).

shall have effect subject to the terms of the conveyance and to the provisions therein contained.

SALES AND OTHER TRANSACTIONS.

General Words.

(5.) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned than the title which the conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(6.) This section applies only to conveyances made after the commencement of this Act.

Use of general words as to land or houses

The object of inserting general words in a conveyance was to prevent any question as to whether a particular easement or right would or would not pass without those words. In most cases the words might be useless; still in some case they might be required, as for instance, to pass reputed rights and easements. As a general rule in case of land and houses they merely express what is included in the description, or forms part and parcel of the land or houses, and the rights and easements appurtenant thereto, *i.e.* annexed by express or implied grant, and all these pass with the land or houses (Gale, 47; 88, 5th ed.; Williams on R. P. 328, 12th ed.)

Easements used or enjoyed with but not appurtenant to land.

But where an easement has become extinct by unity of possession of the dominant and servient tenements, a conveyance of land or a house "with all easements therewith used and enjoyed," will operate as a grant *de novo* of the easement which, though at one time appurtenant, had been extinguished (*Barlow* v. *Rhodes*, 1 Cr. & M. 448; Gale, 48; 90, 5th ed.; Williams on R. P. 329, 12th ed.) Even where no easement existed before the unity of possession, but a right of way was used with one tenement over the other, a grant of the first-mentioned tenement, "together with all ways now *used* or *enjoyed therewith*," would pass the right of way (*Barkshire* v. *Grubb*, 18 Ch. D. 616; see also *Watts* v. *Kelson*, L. R. 6 Ch. Ap. 166; *Kay* v. *Oxley*, L. R. 10 Q. B. 360). A conveyance after 1881 will operate in like manner under this Act, without any express general words.

General words as to manors.

The general words used in a conveyance of a manor either (1) express what is included in the description as parcel of the manor (see Shep. Touch. 92), or (2) they are royal franchises, which if they are appurtenant to the manor pass without express words, but not otherwise (see *Morris* v. *Dimes*, 1 Ad. & El. 654).

Mines and minerals.

Mines and minerals pass under a conveyance of land without being expressly mentioned, except in copyhold or customary assurances and except in conveyances to railway companies, from which latter they are excepted unless expressly mentioned (see 8 & 9 Vict. c. 20, s. 77).

They are therefore omitted from the general words which by this section are made applicable to land and houses, but are included in the general words applicable to manors, as they may in some cases have become severed from the manor, and once severed could not be reunited to it as they might be to the surface of land. It may be a question whether an enfranchisement of copyholds by conveyance of the fee simple reserving the minerals would not operate as a severance.

Covenants for Title.

Covenants for Title.

Covenants for title to be implied.

7.—(1.) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say:

Covenant need not be expressed to be for heirs, &c.

This clause should be read in connection with s. 64, making singular include plural and plural singular. Sect. 59, subs. 2, and subs. 6 of this section render it unnecessary to provide expressly that the covenant shall be by the conveying party "for himself, his heirs, executors, or administrators," or that it shall be with the "heirs and assigns" of the party to whom the conveyance is made. As regards acts to be done under the covenant, when made with two or more, this section should be read with s. 60, subs. 2.

Joint and several covenants, how implied.

Therefore when "A. and B. convey as beneficial owners," it is implied that "A. and B." (plural, s. 64) "hereby for themselves, their heirs, &c." (subs. 6, and s. 59 (2),) "covenant," that is, they give a joint covenant. When "each of them A. and B. as beneficial owner hereby conveys as beneficial owner," it is implied that "each of them hereby for himself, his heirs, &c.," (subs. 6, and s. 59 (2)) "covenants," that is, each gives a several covenant. Where they convey in both modes they give joint and several covenants. Again in the covenant for further assurance the words "at the request and cost of the person," &c., where the conveyance is to several, include "persons" (s. 64) "and" (s. 60) "the survivors or survivor of them, and the heirs of the survivor."

Covenant applies to subject *expressed* to be conveyed.

The covenant of a conveying party is implied "as regards the subject-matter or share of subject-matter *expressed to be* conveyed by him."

S. 7 (1).

SALES AND OTHER TRANSACTIONS.

Covenants for Title.

It is not material that he actually has anything to convey, he may be made in terms to convey simply for the purpose of giving an implied covenant. Therefore, in the case of a conveyance by tenant for life and remainderman if they both convey as beneficial owners a covenant will be implied by both as to the whole fee, joint or several or both, according to the mode in which they convey.

By tenant for life and remainderman.

So also in a conveyance by tenant for life, and remainderman for life, or in tail or in fee, or by joint tenants, or tenants in common, there can be implied covenants joint or several or both, as to the entirety or part, as may be required.

By joint tenants or tenants in common.

The following examples may be useful by way of explanation :—

Where all convey as beneficial owners.

(1.) Where all jointly convey the whole as beneficial owners there will be implied a joint covenant as to the whole;

Each as beneficial owner.

(2.) Where each conveys as beneficial owner only in respect of a share or an estate for his life or a remainder in fee there will be implied a several covenant by each as to the share or estate which he conveys;

All jointly and each separately.

(3.) Where all convey jointly and each conveys severally as beneficial owners and owner in respect of the whole there will be implied a joint and several covenant as to the whole;

Each in respect of whole.

(4.) Where each conveys severally as beneficial owner in respect of the whole there will be implied a several covenant as to the whole;

Under appointment.

(5.) Where trustees convey under a power, the covenant of the tenant for life is obtained either by his being made to convey and confirm, or under subs. (2) by directing the trustees to convey;

(6.) An appointment under a power by a person "as beneficial owner," "trustee," &c., implies a covenant, the appointment being a conveyance: see s. 2 (v);

Conveyances to uses.

(7.) Under a conveyance to uses the implied covenant is with the grantee to uses, being the person to whom the conveyance is made. The covenant with him enures for the benefit of the persons in whom the uses are executed as in the case of an actual covenant. The implied covenant is in fact an actual covenant of the ordinary kind incorporated in the conveyance;

Conveyance by tenant in tail.

(8.) A tenant in tail is by s. 15 of the Fines and Recoveries Act empowered to dispose of the fee simple. He, in fact, conveys the fee under a statutory power, and the whole fee is the subject-matter of conveyance. His covenant therefore applies ro the whole fee simple.

Conveyance made by several.

Where property is sold by several co-owners they together form one owner, and it is conceived they ought to covenant jointly and severally as to the whole, but the practice on this point is not uniform.

The covenants in this section are applicable to property of all kinds, including policies of assurance, reversionary interests in personal estate, choses in action, and personal chattels: see the definition of conveyance, s. 2 (v).

S. 7 (1), (A.).

SALES AND OTHER TRANSACTIONS.

Covenants for Title.

(A.) In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Covenants applicable to all property.

On conveyance for value, by beneficial owner.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which, it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the

Right to convey.

Quiet enjoyment.

Freedom from incumbrance.

S. 7 (1), (A).

SALES AND OTHER TRANSACTIONS.

Covenants for Title.

conveyance have been or shall be made, occasioned, or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

Further assurance.

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

How conveying party to be described.

The meaning of clause A is that the actual words of conveyance must describe the conveying party as "beneficial owner," or "settlor," or otherwise (as intended): (see the 4th Sch. to the Act, Forms I., III., and IV.). It is not sufficient to recite that he is seised in fee, and then for him to convey simply. He must be expressed to convey as

"beneficial owner," "settlor," or otherwise as the case may require. The object of requiring these special words of description to be used is to enable those who do not wish to adopt the Act to frame their conveyances, mortgages, &c., in the same form precisely as before the Act.

S. 7 (1), (A), (B).

SALES AND OTHER TRANSACTIONS.

Covenants for Title.

It is not necessary, in order that a conveyance may operate under this section, to use the word "convey" or "conveyance." These words include all the operative words "assign," &c., ordinarily used, see s. 2 (v), and may be used instead of the word "grant," see s. 49, and the schedules to this Act where "convey" is used to pass a fee simple, and s. 57, which enacts that deeds using expressions to the like effect as in the 4th schedule shall be sufficient. Accordingly it is immaterial what word is used; in a conveyance in fee "grant" may be used; in a conveyance under a power "appoint" may be used; and in the case of personal estate "assign" may be used, all these words being equally capable of attracting the covenants in this section.

Word "convey" not necessary.

Any operative word sufficient.

The expression "purchase for value" is not to include a conveyance in consideration of marriage for the reason that the covenant E, *post*, by a settlor is a limited covenant. Therefore a person deriving title under a marriage settlement should covenant as to the acts of the settlor in the same manner as he would covenant for the acts of his ancestor if he were conveying as heir at law.

"Purchase for value."

A voluntary conveyance (if it be not a settlement to which covenant E is made applicable) still requires an express covenant, if any is intended to be given, but in most cases no covenant would be given.

Covenants in voluntary conveyance.

If A. takes by conveyance on a sale by B., who takes under a settlement, voluntary or otherwise, made by C., then B. derives title "otherwise than by purchase for value" through C., and in the conveyance by B. to A. the implied covenant by B. would extend to the acts of C. But A. does not derive title "otherwise than by purchase for value" through B. and consequently not through C., and on a conveyance by A. his implied covenant would extend only to his own acts. This appears clear if we consider that, assuming the settlement voluntary, C. could defeat it by conveyance for value before A.'s purchase but not afterwards. The implied covenant therefore extends back only to acts from the last conveyance for value not being a settlement.

How far back covenant extends.

(B.) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

On conveyance of leaseholds for value, by beneficial owner.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the

Validity of lease.

S. 7 (1), (B), (C).

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lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance:

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

On assignment of leaseholds express covenant by purchaser still required.

The Act does not provide for the covenant of indemnity against rent and covenants by a purchaser on the assignment of leaseholds. The circumstances differ so much that a general covenant could not easily be framed. Moreover the purchaser does not always execute the deed.

On mortgage, by beneficial owner.

(C.) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Right to convey.

Quiet enjoyment.

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed,

S. 7 (1), (C), (D).

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or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will, from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

Freedom from incumbrance.

Further assurance.

(D.) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

On mortgage of leaseholds, by beneficial owner.

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the

Validity of lease.

S. 7 (1), (D), (E).

SALES AND OTHER TRANSACTIONS.

Covenants for Title.

land conveyed and is in full force, unforfeited, and unsurrendered and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them:

Payment of rent and performance of covenants.

On settlement.

(E.) In a conveyance by way of settlement, the following covenant by a person who conveys and is expressed to convey as settlor (namely):

For further assurance, limited.

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving

title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required:

S. 7 (1), (E), (F).

SALES AND OTHER TRANSACTIONS.

Covenants for Title.

The old practice in settlements was for the settlor to give the ordinary vendor's covenants for title. This can still be done by making him convey as beneficial owner instead of as settlor, and so incorporating covenant A. The old practice is inconvenient. If a charge be suppressed or accidentally overlooked, the trustees on discovering it become bound to sue the settlor. The amount to be recovered might be such as to leave him penniless and make proceedings in bankruptcy necessary. This cannot be for the benefit of the wife or family, and is an obligation which should not be imposed on trustees. There should be either no covenant for title, or at most this limited covenant E, which binds the settlor to bar an estate tail or execute a valid appointment under a power, or do any other like act for confirming the settlement, but does not throw on him any obligation to discharge incumbrances.

Covenants in settlements, old practice as to.

(F.) In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts only (namely):

On conveyance by trustee or mortgagee.

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

Against incumbrances.

On a change of trustees the covenant against incumbrances of an outgoing trustee is now of little importance, any wrongful incumbrance is a breach of trust for which there is a remedy independently of the covenant. Before the Act 32 & 33 Vict. c. 46, the covenant was useful as making the breach of trust a specialty debt having a certain priority.

Covenant by outgoing trustee not material.

S. 7 (2), (3),

SALES AND OTHER TRANSACTIONS.

Covenants for Title.

On conveyance by direction of beneficial owner.

(2.) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

Under subs. 1 the covenant implied on the part of any person conveying relates to what he himself conveys. Under this subs. the covenant implied on the part of the person directing applies to what another conveys by his direction. The same result would be attained by making him convey by way of confirmation as beneficial owner.

Old practice as to covenants by tenant for life.

This subs. is intended to apply to a case like that of a sale by trustees under a power by the direction of the tenant for life: (see Preced. II., *post*). The old practice was to make the tenant for life covenant generally as if he were a vendor seised in fee. Latterly the practice has been to confine his covenant to his life estate only (see Dart, V. & P. 548, 5th ed.; 2 Dav. Conv. 261 (*o*), 4th ed.). If desired a proviso so limiting the covenant can be added (see subs. 7, and Preced. II., *post*).

Implied covenants in conveyance by husband and wife.

(3.) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

The object of this subs. is to enable covenants on the part of the husband to be incorporated where husband and wife convey (see Preced. IV., *post*).

The wife may convey with consent of the husband, the husband not conveying (see Preced. III., *post*.) Then the covenant is by the wife only, to the effect that notwithstanding anything done by her, &c., or any one through whom she derives title otherwise than, &c. But the

general practice is for the wife to convey, and the husband also to convey and to confirm. In that case the wife and the husband should each be expressed to convey as beneficial owner, then within this subs. she will be deemed to convey by the direction of her husband as beneficial owner, and the three following covenants will be implied: (1) by the wife as beneficial owner binding her present separate estate which she is not restrained from anticipating (see *Tullett* v. *Armstrong*, 4 Beav. 323 per M.R.; *Pike* v. *Fitzgibbon*, 17 Ch. D. 454); (2) by the husband as beneficial owner; and (3) by the husband in the same terms as the covenant implied on the part of the wife, that is in effect, that notwithstanding anything done by her or by any one through whom she derives title otherwise than &c.

A married woman conveying under a power.

Where a married woman conveys under a power she and her husband may in like manner each be expressed to convey as beneficial owner, then the three covenants above mentioned will be implied. The second of those covenants (being the first of the husband's covenants) will not be of importance, but his second covenant corresponds with the usual one entered into by him in similar cases independently of this Act.

(4.) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

This subs. renders it clear that a conveyance can be drawn in the old form. Where it is desired not to use the statutory covenants the character in which the conveying party conveys should not be stated, and covenants can be inserted in express words.

(5.) In this section a conveyance includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary assurance, other than a deed, conferring the right to admittance to copyhold or customary land.

Covenant to surrender may incorporate covenant.

By s. 2 (v.) "conveyance" includes a covenant to surrender. The statutory covenants contained in this section may therefore be incorporated in the deed of covenant, but they cannot be incorporated in the surrender. They may also be incorporated in all cases where

S. 7 (5), (6), (7), (8); S. 8 (1).

customary or copyhold lands can be dealt with as freeholds, for instance, where they pass by bargain and sale under a power in a will, or by deed and admittance, or where an equity is conveyed.

SALES AND OTHER TRANSACTIONS.

Covenants for Title.

(6.) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

Benefit of implied covenants in this section to run with the land.

This subs. makes all covenants implied under this section run with the land so as to be enforceable by every person interested under the conveyance. It precludes any difficulty as to what covenants do or do not run with the land. An implied covenant under this section will therefore be more valuable than the ordinary covenant.

(7.) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

Variation of statutory covenants may be made.

This subs. enables provisions to be inserted modifying the statutory covenant in any agreed manner. As so modified it will be equivalent in effect for the purpose of running with the land and otherwise, to the simple statutory covenant. The proviso limiting the covenants for title by a tenant for life is an example of a variation under subs. 7, and is a valid proviso and not repugnant to the covenant (see *Williams* v. *Hathaway*, 6 Ch. D. 544).

(8.) This section applies only to conveyances made after the commencement of this Act.

Execution of Purchase Deed.

Execution of Purchase Deed.

Rights of purchaser as to execution.

8.—(1.) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

(2.) This section applies only to sales made after the commencement of this Act.

S. 8 (2); S. 9 (1), (2), (3), (4).

This section precludes the questions raised in *Viney* v. *Chaplin*, 4 Drew. 237, 2 D. & J. 468; *Essex* v. *Daniel*, L. R. 10 C. P. 538; and *Ex parte Swinbanks*, 11 Ch. D. 525.

SALES AND OTHER TRANSACTIONS.

Production and Safe Custody of Title Deeds.

Production and Safe Custody of Title Deeds.

Acknowledgment of right to production, and undertaking for safe custody of documents.

9.—(1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3.) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4.) The obligations imposed under this section by an acknowledgment are—

(i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or

S. 9 (4), (5), (6).

SALES AND OTHER TRANSACTIONS.

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copies thereof, by the person entitled to request production or by any one by him authorized in writing; and

(ii.) An obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or elsewhere in the United Kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

(iii.) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

Legal right to production assimilated to the equitable right.

This section removes certain difficulties as to covenants for production running with the land, and makes the legal right to production co-extensive with the equitable right (as to which, see Dart, ch. ix., s. 2, 5th ed.). Also it removes the personal liability of the original covenantor after he has parted with the documents, and transfers that obligation to each subsequent possessor, but for the period only of his possession. This personal liability has sometimes compelled a covenantor to retain documents after he had ceased to be interested in any land affected by them, or else to incur the expense of obtaining, and of procuring the covenantee to accept, a substituted covenant, and consequently to sell subject to special conditions.

Effect of s. 9.

A person retaining documents is now enabled to give (1) an acknowledgment of the right to production, and (2), an undertaking for safe custody, together or separately. The first, unlike a covenant to the same effect, may safely be given by a trustee or mortgagee. He can always produce the documents while he has possession of them, and he ceases to be liable after he has parted with them. He should only give the acknowledg-

ment and not the undertaking. An ordinary vendor will be liable to give both in the absence of special contract.

S. 9 (6), (7), (8), (9).

"Retain" is used in this section in its primary signification of "to keep": see Todd's Johnson, see also Webster.

SALES AND OTHER TRANSACTIONS.

Subs. 6 expressly excludes all liability to damages for loss or destruction where an acknowledgment only is given. The liability for damages arises only upon an undertaking under subs. 9.

Production and Safe Custody of Title Deeds.

"Retain."

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

No liability to damages where acknowledgment only given.

(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

Where by general law, and in the absence of special contract, a person would be bound to give a covenant for production and delivery of copies, subs. 8 enables him to give an acknowledgment in place of the covenant, but does not compel him to do so. He still has the option of giving a covenant, an option not likely to be exercised, as the covenant creates a more onerous liability.

Acknowledgment substituted where liability to give covenant to produce.

(9.) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncancelled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

This subs., as compared with the ordinary covenant for production, operates as a relief to the person bound to produce. It makes him

Liability under undertaking is on possessor only.

S. 9 (9), (10), (11), (12), (13), (14).

SALES AND OTHER TRANSACTIONS.

Production and Safe Custody of Title Deeds.

Damages for loss of deeds.

liable for damages only while the documents are in his possession. On the other hand, it imposes an additional liability on any person afterwards acquiring possession of the documents, making him liable in damages for loss or destruction, a liability not necessarily devolving on him under the ordinary covenant merely by reason of his receiving the documents from a person who had covenanted for safe custody. As to the question of damages, see *Hornby* v. *Hatcham*, 16 Sim. 325, and *Brown* v. *Sewell*, 11 Hare, 49. In *James* v. *Rumsey* (11 Ch. D. 398) the mortgagor was held entitled to an indemnity, but not to compensation.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

Application under acknowledgment or for damages, how made.

An application to the Court under this subs. or under subs. 7 should be by summons: see s. 69 (3).

(11.) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

See note to subs. 8.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14.) This section applies only to an acknowledgment

or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

Production and Safe Custody of Title Deeds.

Whether trustees should give undertaking.

The covenant for production of documents intended to be superseded by this section imposed two obligations, (1) an obligation to produce, (2) an obligation to keep safe. The first could be enforced by specific performance, but the remedy on the second was damages only. The old practice was that a trustee selling did not give any covenant. Latterly it has been customary for him to give a covenant limited so as to bind himself personally while having possession of the documents, and so as to bind the same, so far as may be, in the hands of other persons, "but so as not to create any further liability," or "so as not to create any liability for damages." With this limitation inserted it is conceived that the part of the covenant as to safe keeping should have been omitted, the limitation of liability being repugnant and void (*Williams* v. *Hathaway*, 6 Ch. D. 544); but this does not seem always to have been attended to in the precedent books. However this may be, the general rule is that a trustee does not covenant except for his own acts, and ought not to be asked to guarantee the safety of documents which might be lost without his personal neglect, as for instance, by his solicitor on a journey, when properly removing them. In this view trustees ought only to give an acknowledgment under this section and not an undertaking. If they give an undertaking any damages incurred could not, it is apprehended, in the absence of special provision, be recouped to them out of the part of the trust estate retained. But on purchase of an estate with deeds bound by an undertaking, the liability would be one attached by law to the estate, and in a proper case the trustees would be entitled to be recouped any loss. The same principle applies to mortgagees.

Acknowledgment or undertaking may be included in the conveyance.

The old practice was to take the covenant for production of documents by a separate deed, and not to include it in the conveyance. On subsequent dealings it was kept off the abstract, and no opportunity was given for making requisitions as to the documents mentioned in the covenant. Having regard to the Act, 22 & 23 Vict. c. 35, s. 24, it is conceived that a solicitor cannot now safely omit giving an abstract of a document of even date with the conveyance commencing a title. And inasmuch as under the C. A., s. 3 (3), when a conveyance becomes a root of title any requisition as to prior documents is precluded, there is no sufficient reason for having an undertaking by a separate document, unless the schedule of documents would make the conveyance inconveniently long, or except for the purpose of enabling it to be destroyed when production under it has ceased to be of importance.

Stamp on an acknowledgment or undertaking.

It is advisable that an acknowledgment or undertaking when given by a separate writing, under hand only, should bear a sixpenny agreement stamp; though not a document clearly included in the Stamp Acts, it would probably be held to be in effect an agreement.

S. 9 (14); S. (10).

SALES AND OTHER TRANSACTIONS.

Production and Safe Custody of Title Deeds.

Expense by whom to be borne.

No indemnity required on delivery over.

Section only applies to persons actually having possession.

An acknowledgment and undertaking being substituted for a covenant the expense will be borne by the person who would pay for the covenant, but, besides the stamp, the expense will in any case be no more than the mere cost of making out a schedule of documents.

The liability of a person giving an acknowledgment or undertaking ceases when the documents are delivered over, and attaches to the person receiving them. Therefore no indemnity need be taken on delivery over, but it is conceived that they must be properly delivered over, that is to say, to a person having an interest in the property to which they relate.

The acknowledgment or undertaking must be given by a person who retains the documents, *i.e.*, who actually has possession of them. Therefore where, as sometimes happens on a sale of property in mortgage, the mortgagor and mortgagee are required to place themselves under an obligation for production, the obligation by the mortgagee being limited to the period during which he has possession, he alone can give an acknowledgment. The mortgagor does not retain the deeds, and his obligation is, not to produce, but to procure production, and must be provided for by covenant in the old form.

LEASES.

III.—LEASES.

Rent and benefit of lessees covenants to run with reversion.

10.—(1.) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessees part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(2.) This section applies only to leases made after the commencement of this Act.

Beneficial owner as well as legal reversioner entitled to sue.

This section gives to the "person entitled to the income," that is, the beneficial owner, as well as the legal reversioner, the right to sue. It also gives a mortgagee the right to sue on the lessee's covenants in a lease made under s. 18 of this Act by the mortgagor, see note to that s.

As to the cases in which the benefit of covenants by lessees ran with

the reversion prior to this Act, see *Spencer's Case*, and notes, 1 Smith, L. C. 80 *et seq.* 8th ed.

Obligation of lessors covenants to run with reversion

11.—(1.) The obligation of a covenant entered into by a lessor with reference to the subject-matter of a lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2.) This section applies only to leases made after the commencement of this Act.

Lessor's covenants in leases under powers.

This section makes legally binding on the successors in title of a person who grants a lease under a power, all covenants which, as against the remainderman, the grantor has power to enter into.

As to the cases in which the obligation of covenants by lessors ran with the reversion before this Act, see *Spencer's Case*, and notes, *ubi sup.* As to the obligation of covenants running with the land, generally, see note to s. 58, *post.*

This section necessarily does not apply to cases where the covenants are not severable in their nature, or are not attributable to particular parts of the demised property.

Principle of 32 Hen. 8, c. 34, extended to leases binding the legal reversioner.

The two preceding sections effect a considerable extension of the principle of the Act 32 Hen. 8, c. 34, whereby the benefit of a covenant was annexed to the reversion. In order to be within that Act, the covenant must have been entered into with the legal owner of the reversion, so that in a lease under a power reserved to the mortgagor by the mortgage deed a covenant by the lessee with the mortgagor did not run, but was a covenant in gross, the mortgagor not being the legal reversioner. Now under s. 10 of this Act wherever there is a legal reversion, that is, where a lease is made by means of an ordinary power or a statutory power (see s. 18, *post*), enabling a legal term to be carved out of the reversion, the lessee's covenants are annexed to and run with the reversion, and are no longer covenants in gross.

So under s. 11, the covenants of a lessor, who has power to bind the reversionary estate, will run with and bind the reversioner, though the

SS. 11, 12; S. 13 (1), (2).

LEASES.

lessor be tenant for life only, or, as mortgagor, be entitled only to an equitable interest.

Where a mortgagor, not having power to bind the mortgagee, grants a lease, no legal term is created, and there being consequently no reversion, ss. 11 and 12 do not apply. If, however, the mortgagee reconvey to the mortgagor, the lease becomes good by estoppel.

Apportionment of conditions on severance, &c.

12.—(1.) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition, contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2.) This section applies only to leases made after the commencement of this Act.

Application of this section.

The 22 & 23 Vict. c. 35, s. 3, provides for the apportionment of conditions of re-entry where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned. This section of the present Act provides for the apportionment of every condition in a lease, which is in its nature apportionable, and includes the case of the avoidance or cesser in any manner of the term granted by the lease as to part only of the land comprised therein.

On sub-demise, title to leasehold reversion not to be required.

13.—(1.) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3.) This section applies only to contracts made after the commencement of this Act.

S. 13 (3); S. 14 (1), (2).

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This section is supplementary to s. 3 (1), and to the V. & P. A., s. 2 (1).

The effect of this section, together with s. 2 (1) of the V. & P. A., on a contract to grant a lease, is as follows:

What title to be shewn by leaseholder selling or leasing.

By the V. & P. A., under a contract to grant a lease for a *term of years*, the intending lessee—

(1) Cannot, whether the intending lessor be freeholder or leaseholder, call for the title to the freehold,

(2) But can, if the intending lessor be a leaseholder, call for the lease and the subsequent title thereto.

By the above s. 13 the intending lessee

(3) Cannot, where the intending lessor holds by under-lease, call for the title of the superior leasehold reversion on such underlease.

In contradistinction to a freeholder, the leaseholder is still left under liability to shew his own lease and the subsequent title thereto. This is in accordance with the usual practice. The freeholder almost invariably bars himself from shewing his own title on granting a lease, but a leaseholder does not generally do so. There are obvious reasons why a difference should be made.

Forfeiture.

Forfeiture.

Restrictions on and relief against forfeiture of leases.

14—(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice (*a*) specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(*a*) As to service of notice, see s. 67.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action

S. 14 (2), (3). LEASES. *Forfeiture.*

brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.

What relief against forfeiture existed before this Act.

Before this Act no relief could have been obtained against forfeiture for breach of covenant in a lease, containing the usual proviso for re-entry on breach of covenant, except in the case of a covenant for payment of rent or insuring against fire (*Hill* v. *Barclay*, 18 Ves. 56; *Bracebridge* v. *Buckley*, 2 Price, 200; *Nokes* v. *Gibbon*, 3 Drew, 681); or except in cases of accident or surprise (*Hill* v. *Barclay*, 18 Ves. 62); or under special circumstances enabling a Court of Equity to grant relief (*Bamford* v. *Creasby*, 3 Giff. 675; *Bargent* v. *Thomson*, 4 Giff. 473; *Hughes* v. *Metrop. R. C.*, 2 App. Cas. 439). Under 22 & 23 Vict. c. 35, ss. 4–9, Courts of Equity had power to grant relief in certain cases of forfeiture for omission to insure against fire. That power was extended to Courts of Common Law by the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 2. These enactments are repealed by this Act (see subs. (7) of this section); but by subs. (8) the relief against forfeiture for non-payment of rent, which extends to an underlessee (*Doe* v. *Byron*, 1 Com. B. 623), is left untouched (as to this relief at common law see the C. L. P. Act, 1852, 15 & 16 Vict. c. 76, s. 212, and the C. L. P. Act of 1860, 23 & 24 Vict. c. 126, s. 1).

How damages are to be ascertained.

Subs. 2 will impose on the judges the difficult duty of deciding the terms on which relief is to be granted. It would have been well if the Act could have given some guide for estimating the penalty to be imposed on the lessee. Where there has been a breach of a covenant to insure, but no loss, it is difficult to say what is a proper sum to be paid to the landlord. Before the Act the landlord would have recovered the whole value of the lease, so that the penalty may be said to range from a farthing to that full value. The probability is that where no loss has been incurred no damages will be awarded, and the only penalty will be costs.

(3.) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee-farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and

S. 14 (3), (4), (5), (6), (7), (8).

LEASES.

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the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies, although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6.) This section does not extend—

(i.) To a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy (*b*) of the lessee, or on the taking in execution of the lessee's interest; or

(ii.) In case of a mining lease (*c*), to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(7.) The enactments described in Part I. of the Second Schedule to this Act are hereby repealed.

Protection of purchaser of leaseholds against forfeiture for non-insurance.

The repeal by this subs. of s. 8 of 22 & 23 Vict. c. 35, does away with the special relief given in respect of insurance to a purchaser of a leasehold, and places him in the same position as his vendor in respect to relief generally against forfeiture. The Court would scarcely enforce a forfeiture against a purchaser without notice, or award damages or enforce a penalty against him, and he thus appears practically in as good a position in respect to insurance as under the repealed Act. The case of *Ex parte Gorely*, 4 De G. J. & S. 477, rendered s. 7 of the same Act no longer necessary.

(8.) This section shall not affect the law relating to

S. 14 (9); S. 15.

LEASES.

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re-entry or forfeiture or relief in case of non-payment of rent (*d*).

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

(*b*) As to the meaning of "Bankruptcy," see s. 2 (xv.)

(*c*) As to the meaning of "mining lease," see s. 2 (xi.)

Forfeiture, &c., for non-payment of rent.

(*d*) As to forfeiture and relief against forfeiture for non-payment of rent, see Woodfall L. & T. 291–298, 11th ed.

MORTGAGES.

IV.—MORTGAGES.

Powers of mortgagor conferred by this Act.

The following is a summary of the powers conferred on mortgagors and mortgagees by this Act and made incident to their estates, unless a contrary intention is expressed, except as to the first two powers, (i.) and (ii.), which apply notwithstanding any stipulation to the contrary.

A mortgagor

(i.) May require the mortgagee, not being or not having been in possession, to transfer instead of reconveying, and to assign the debt: C. A. s. 15;

(ii.) May inspect and take copies of title deeds: s. 16;

(iii.) May redeem one mortgage without redeeming any other: s. 17;

(iv.) May have an order for sale in a redemption action: s. 25;

Mortgagor in possession.

(v.) May when in possession make or agree to make agricultural or occupation leases not exceeding twenty-one years, and building leases not exceeding ninety-nine years: s. 18 (1) (17).

(i.) and (iv.) are retrospective, (ii.) is not; (iii.) applies where the mortgages, or one of them, are or is made after 1881; (v.) is not retrospective, except by agreement.

Powers of mortgagee.

A mortgagee under a deed made after 1881

(vi.) May when the mortgage money has become due sell or concur in selling: ss. 19 (1), 20, 21;

(vii.) May insure: ss. 19 (ii.), 23;

(viii.) May appoint and remove a receiver: ss. 19 (iii.), 24;

(ix.) May give receipts for purchase and other moneys and securities: s. 22;

(x.) May after his power of sale has become exercisable recover the title-deeds, except against persons having prior claims: s. 21 (7);

(xi.) May, whether the mortgage is before or after 1881, obtain an order for sale in action for foreclosure or redemption: s. 25 (2);

Mortgagee in possession.

(xii.) May when in possession exercise the like powers of leasing or agreeing to lease as a mortgagor in possession: see (v.) *supra*; s. 18 (2), (17);

(xlii.) May cut and sell timber: s. 19 (iv.).

(xi.) is retrospective, (vi.) to (x.), and (xiii.) are not; (xii.) is not retrospective except by agreement.

(xiv.) On the death of a sole mortgagee dying after 1881 the estate devolves on his personal representatives, notwithstanding any devise in his will: s. 30.

S. 15 (1), (2), (3).

MORTGAGES.

Devolution of mortgage estates on death.

Obligation on mortgagee to transfer instead of re-conveying.

15.—(1.) Where a mortgagor is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee, instead of re-conveying, and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly.

When transfer of an equitable charge necessary.

This section includes an equitable as well as a legal mortgage. Though a second mortgage, or any other equitable charge, is discharged by mere payment by the owner of the equity of redemption, and no re-conveyance is necessary, yet it is not so discharged if paid by another person, and if so paid, a transfer can be required under this section of an equitable charge as well as of a legal mortgage.

(2.) This section does not apply in the case of a mortgagee being or having been in possession.

Why mortgagee in possession excepted.

The reason for excepting a mortgagee in possession (see Coote, Mortg. 655, 741, 4th ed.), is, that once having taken possession he remains liable for all that he might but for his wilful default have received, and also liable in respect of working minerals and other matters, and remains liable after transfer for the acts and defaults of the transferee. Though the request of the mortgagor to transfer might operate as a release by him, the liability to mesne incumbrancers would still continue. A second or subsequent mortgagee might go into possession and be ousted by a prior mortgagee. Therefore it is necessary to exclude a mortgagee who has been in possession.

(3.) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

In applying this and the following sections it must be remembered

that mortgagor includes any person deriving title under the original mortgagor or entitled to redeem: s. 2 (vi.)

Decisions cancelled.

The decisions cancelled by this section are *Dunstan* v. *Patterson*, 2 Ph. 345, and others referred to in Fisher, Mortg. 1005 (*l*), (*m*), 2nd ed.; and Coote, Mortg. 735 (*m*), 4th ed.

How rights under this s. enforced.

The mode of enforcing the right given by this section will be (1) by an action to redeem, in which the mortgagee will be directed to transfer instead of reconveying, and on refusal there will be the same remedy as on refusal to reconvey; (2) in case of a sale, by payment of the amount of the incumbrance into Court under s. 5, when on refusal to transfer a vesting order can be made under that section.

Retrospective effect.

The section is retrospective, to which there can be no objection. A mortgagee is not injured by having to transfer on receiving his money. Refusal can only be for the purpose of extorting something more, but for this purpose a mortgagee would scarcely incur the liability of going into possession, so as to protect himself under subs. 2 from transferring.

Power for mortgagor to inspect title deeds.

16.—(1.) A mortgagor, as long as his right to redeem subsists, shall, by virtue of this Act, be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

(2.) This section applies only to mortgages made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

See observations, *ante*, on s. 5.

Cases affected.

As to the decisions rendered by this section inapplicable to mortgages made after 1881, see Fisher, Mortg. 340, 2nd ed.; and Coote, Mortg. 729, 4th ed.

Refusal to produce deeds may impose great hardship on a mortgagor preventing him from obtaining an advance to pay off the mortgage, and leaving him powerless to prevent foreclosure.

Restriction on consolidation of mortgages.

17.—(1.) A mortgagor seeking to redeem any one mortgage, shall, by virtue of this Act, be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

(3.) This section applies only where the mortgages or one of them are or is made after the commencement of this Act.

Cases affected.

As to the decisions affected by this section, see Fisher, Mortg. 678 *et seq.* 2nd ed.; Coote, Mortg. ch. 67, 4th ed.

Equity of redemption altered.

The words "seeking to redeem" are general, and apply to the case of a mortgagor or subsequent incumbrancer giving notice to pay off as well as to the case of a redemption suit, or of a payment under an order in a foreclosure suit. Thus in the absence of agreement to the contrary, an equity of redemption arises in the mortgagor free from the right to consolidate. He is put in the same position as if he were another mortgagor, consequently the surplus proceeds of a sale (s. 21 (3)) under one security cannot be applied to make good the deficiency of another security.

How consolidation may still arise.

Under this section consolidation of mortgages can only arise by express contract. It does not in terms repeal any previously existing rule of law, but it confers on the mortgagor a right in opposition to a previously existing rule, and at the same time permits him to waive that right by contract. The result, it is conceived, is to substitute consolidation by contract of the parties in place of consolidation by rules of equity, so that where a contract is not effectual the right to consolidate does not arise. The contract in effect gives, in certain cases, a further charge on other property, and is effectual only where the further charge would be effectual. Thus if A. purchase the equity of redemption of two estates, each from a different vendor, each estate being mortgaged to the same mortgagee, neither vendor was ever in a position to give a further charge on the other estate to his mortgagee, and there can be no consolidation of the two mortgages.

In what cases there will be no consolidation.

The effect of subs. 3 is to reserve to a mortgage made before the commencement of the Act its old right in equity to become consolidated with another mortgage, whatever may be the date of the latter. In ordinary cases the mortgagee will be content to rely on the one security taken by him as being sufficient, and will not reserve the right to consolidate. In special cases, as loans to builders, where it is intended to make numerous advances, the right to consolidate will be reserved. Where the contract is for a single loan on specific property, there can be no more obligation on the solicitor of the vendor to obtain a further charge on other property contingent merely on its becoming vested in his client as mortgagee, than to take a charge on all other present and future property of the mortgagor.

S. 18 (1), (2), (3), (4), (5), (6), (7), (8).

MORTGAGES.

Leases.

Leases.

Leasing powers of mortgagor and of mortgagee in possession.

18.—(1.) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorized.

(2.) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

(3.) The leases which this section authorizes are—

(i.) An agricultural or occupation lease for any term not exceeding twenty-one years; and

(ii.) A building lease for any term not exceeding ninety-nine years.

See definition of building lease, s. 2 (x.)

As to mining lease.

A mining lease is not by this section directly authorized, as it involves an abstraction of part of the security, but it can be authorized by agreement (see subs. 14).

(4.) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5.) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6.) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7.) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(8.) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9.) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connexion with building purposes.

(10.) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

The time during which a peppercorn rent is payable can be shortened: see subs. 13.

(11.) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with.

The penalty for omitting to deliver the counterpart is that the power of sale becomes exercisable (see s. 20 (iii.) *post*.) The validity of the lease is not affected.

(12.) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13.) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

A contrary intention will be expressed by the mortgagor and mortgagee in the mortgage deed, whether the mortgagee executes or not. The mere acceptance by him of the security binds him, as in the ordinary case of an agreement not to call in the principal money for a fixed term, or for reduction of interest.

S. 18 (14), (15), (16), (17).

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(14.) Nothing in this Act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exerciseable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage deed.

Special provisions allowed.

This subs. enables special provisions to be made as to leasing, and leases made in accordance with such provisions will be in the same position as leases authorized by this section.

(15.) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16.) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

The subs. enables the provisions of this section to be applied in case of mortgages made before 1881.

(17.) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

Subs. 17, extending the provisions of this section to agreements whether in writing or not for leasing or letting, must be read in connection with the Statute of Frauds (29 Car. 2, c. 3), ss. 1, 2, and 8 & 9 Vict. c. 106, s. 3, by the combined operation of which enactments a lease for three years or less may be in writing or parol, but a lease for

more than three years must be by deed: see Woodfall, L. & T. 79, 116, 11th ed.

Parol agreement.

The effect of the words "so far as circumstances admit," is that subss. 7 and 8 as to covenant, condition of re-entry, and counterpart, do not apply to a parol agreement, and subs. 7 as to covenant does not apply to an agreement in writing, except that there ought to be the nearest approach to a covenant, namely an agreement to pay rent.

This section removes serious difficulties in granting leases of mortgaged property (see Woodfall, L. & T. 48 *et seq.* 11th ed.).

Effect of leases under this section.

Power is given to the person in possession, whether owner or incumbrancer, to grant, or contract to grant (subs. 12), leases of the kind specified in subs. 2, conformable to the other provisions of this section. These leases will be binding on all other persons interested, and will confer a valid legal term, leaving a legal reversion in the mortgagee. The rent and the benefit of the lessee's covenants (see s. 10, *ante*) will become annexed to the actual legal reversion, and thus the owner and incumbrancers will be in the same position as if they had all joined in granting the lease. The actual legal reversioner will have the same remedies as to recovery of rent, suing on covenants, and re-entry for condition broken, and be in the same position as if he had granted the term, and will be entitled to the counterpart under subs. 8 or 11 as the case may be. The lessee will also, to the extent of covenants or clauses authorized by the mortgage deed to be inserted in the lease (see subs. 14), have the same rights against the actual reversioner and persons claiming under him as if he had made or joined in making the lease (see s. 11, *ante*); but this section taken alone only authorizes the simple lease, and does not authorize any covenant or provision imposing liability on a mortgagor or mortgagee not a party to the lease.

Right of reversioner.

Effect of excluding operation of s. 18.

If the mortgagor's power to lease given by this section is excluded, then under a lease made by the mortgagor after the mortgage, the mortgagee has no reversion, the covenants by the lessee are covenants in gross, and cannot be sued upon by the mortgagee if he forecloses or takes possession, nor by a purchaser from him if he sells, unless the mortgagor joins in conveying: see *Cuthbertson* v. *Irving*, 6 H. & N. 135; *Morton* v. *Woods*, L. R. 3 Q. B. 658, 4 ib. 293. The only remedy of the mortgagee when he takes possession is to eject the lessee. This in most cases is not desired, and is an inadequate remedy, especially in the case of house property, where an essential part of the value of the reversion consists in an available remedy against the tenant on the covenants to paint, repair, deliver up in repair, &c. In the case of agricultural land also, the covenants may be of importance if only to give the right to an injunction. Also if the operation of the Act be excluded, acceptance of rent by the mortgagee, or by a purchaser from him will constitute the lessee simply tenant from year to year at Common Law, without reference to the terms of the lease, unless a special agreement be previously made (Woodfall, L. & T. 49, 11th ed.), and in the case of agricultural

S. 18 (17), S. 19 (1).

MORTGAGES.

Leases.

As to nominal rent on building lease.

land, will bring into operation the Agricultural Holdings Act, which renders necessary a year's notice, expiring with a year of tenancy.

There is no objection to the allowance of a peppercorn rent for five years on a building lease as depriving the mortgagee of rent for that time. By contract under subs. 13 any less term may be fixed if desired. Some risk of loss of rent must always be incurred in mortgages of building land. The mortgagor may lease to a builder who can destroy the land for all purposes except building and fail to complete any buildings fit to let. If the lease or agreement be made under this section, then, but not otherwise, the lessee can be sued and all the usual stringent terms of a building agreement can be enforced. If any restriction is to be placed on the power of the mortgagor to lease under this section, it should at most extend to prevent him from granting leases without the consent in writing of the mortgagee. To exclude altogether a power in the mortgagor to lease is certainly not for the benefit of a mortgagee, whose security is materially improved by having a tenant whom he can sue; at the same time the tenant is secured in the enjoyment of his lease. The mortgagor must generally, to make his property available, grant leases of some kind, and it is not advisable to compel him to lease as equitable owner only. The power to lease should be varied as required to suit each case, and not entirely negatived.

Sale; Insurance; Receiver; Timber.

Sale; Insurance; Receiver; Timber.

Sale should be expressed to be under this Act.

A conveyance by a mortgagee selling under the following power should, as is customary in the case of powers given by deed, expressly refer to the power. This, however, is only necessary for the purpose of obtaining the benefit of s. 21 (2), which (following Lord Cranworth's Act, s. 13) only exempts a purchaser from the consequences of an irregularity when the sale is in professed exercise of the power of sale conferred by this Act.

Several mortgages for separate sums.

Where several mortgagees claim under one mortgage, though in distinct sums, it is conceived that all must join in the exercise of the power: see s. 2 (vi.), where "mortgage money" means money, i.e., the whole money secured by the mortgage, and "mortgagee" (which includes the plural) must necessarily have a corresponding meaning; but in mortgages of that kind, and in all other special cases, express provision should be made as to who is to exercise the power (see, for this purpose, subss. 2 and 3 of this section).

Powers incident to estate or interest of mortgagee.

19.—(1.) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

(i.) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and

Mortgaged estate sold with other property.

As to the duty of mortgagees where the mortgaged estate is sold with other property, see the analogous case of the sale of trust property, note to s. 35, *post*.

(ii.) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and

Under this subs. the mortgagee will be justified in insuring, unless the mortgagor shews by delivering receipt for premium, or otherwise, that a proper insurance is maintained.

(iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof; and

(iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any

S. 19 (1), (2), (3), (4); S. 20.

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time not exceeding twelve months from the making of the contract.

The proceeds of the sale of timber will be rents and profits, and applied accordingly.

Proceeds of timber.

(2.) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4.) This section applies only where the mortgage deed is executed after the commencement of this Act.

Powers more extensive than in Lord Cranworth's Act.

This section replaces Part II. of Lord Cranworth's Act, 23 & 24 Vict. c. 145, which is repealed (see second schedule to this Act, Part III.), and gives the more complete and extensive powers now usually inserted in mortgage deeds. Lord Cranworth's Act only applied to hereditaments. This section applies to "property" generally, which word includes all real and personal estate, choses in action, and every right or interest which is capable of being mortgaged: see s. 2 (i.)

The mortgage deed may extend or restrict the powers given by the Act, and the extended or restricted powers have effect under subs. 2, as if conferred by the Act.

Regulation of exercise of power of sale.

20. A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

(i.) Notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or

Notice.

As to giving notice, see s. 67.

How and to whom to be given.

Where a first mortgage contained a power of sale with a proviso that the power should not be exercised without giving notice to the mortgagor or his *assigns*, the mortgagee having received notice of a second

mortgage was held liable in damages to the second mortgagee for not giving him notice before selling (*Hoole* v. *Smith*, 17 Ch. D. 434), and notice to the mortgagor alone was held insufficient, but it was not decided whether notice to the second mortgagee alone would have been sufficient. It is conceived that the mortgagor is not entitled to burden his mortgagee with more than one notice, at least where it is to be given to the mortgagor *or* his assigns. As "mortgagor" includes "any person entitled to redeem according to his estate, interest, or right in the mortgaged property," the expression "one of several mortgagors" means, it is conceived, "one of the several persons entitled, &c., according to his estate," &c., and that it is sufficient if notice of sale be given to the first subsequent incumbrancer who has given notice of his security to the mortgagee who sells.

Mode of excluding this section.

Where an immediate power of sale is desired without notice and without the other restrictions in this section, the proper course will be to agree that the mortgagee shall have the power of sale conferred by this Act, but without the restrictions on the exercise thereof imposed by this section.

Month means calendar month.

"Month" means calendar month: 13 & 14 Vict. c. 21, s. 4. Where the months are broken the computation of a calendar month commences from a given day in one month to the day with the corresponding number in the ensuing month: *Freeman* v. *Read*, 11 W. R. 802.

(ii.) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or

(iii.) There has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

Under this subs. the power of sale arises on breach of a provision which the mortgagor ought to observe, as for instance, in a mortgage of a life interest and policy of assurance, on a breach of the covenant as to keeping the policy on foot.

Conveyance, receipt, &c., on sale.

21.—(1.) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has

S. 21 (1), (2), MORTGAGES. *Sale; Insurance; Receiver; Timber.*

priority, but subject to all estates, interests, and rights which have priority to the mortgage; except that, in the case of copyhold or customary land, the legal right to admittance shall not pass by a deed under this section, unless the deed is sufficient otherwise by law, or is sufficient by custom, in that behalf.

Mode of exercising power of sale.

Under this section the mortgagee will proceed exactly as under the ordinary power of sale in a deed. He will convey the freeholds and also any customary freeholds passing by deed and admittance, and also his equity in copyholds by deed. As to copyholds passing by surrender and admittance, if he has a surrender he will be admitted and surrender to the purchaser. If he has no surrender the legal estate must be obtained by vesting order or otherwise as before the Act.

Mere surrender gives no power to sell copyholds.

The power of sale given by s. 19 only arises where the mortgage is *by deed*. Consequently a mere surrender of copyholds by way of mortgage confers no power to sell, and it may be a question whether a deed containing a mere covenant to surrender would confer the power. In order to give the power the deed should contain an express charge (which is included in the expression "mortgage," see s. 2 (vi.)), and also a declaration that the mortgagor holds the copyholds in trust for the mortgagee, so as to enable a vesting order to be obtained if required.

Declaration of trust by mortgagor as to copyholds.

A similar declaration of trust of a term in leaseholds should be contained in a mortgage by demise.

And as to leaseholds.

Power to convey under Lord Cranworth's Act.

Under the 15th section of Lord Cranworth's Act (23 & 24 Vict. c. 145) it has been held that a mortgagee by sub-demise of leaseholds could assign the whole of the original term (*Hiatt* v. *Hillman*, 19 W. R. 694). It would seem to follow that he could defeat a second sub-demise or an assignment by way of second mortgage, and that a person having by deed a mere charge could convey the legal estate. A power of this kind seems not desirable. It might, when exercised, alter the priority of a subsequent mortgagee obtaining the legal estate without notice.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

This subs. will not protect a purchaser buying with actual knowledge that the requisite notice was not given: *Parkinson* v. *Hanbury*, 1 Dr. & Sm. 143.

S. 21 (3), (4), (5), (6), (7).

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(3.) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorized to give receipts for the proceeds of the sale thereof.

Under this subs. the mortgagee is authorized not merely to discharge prior incumbrances, but to pay in the sum required under s. 5 to be paid into Court to answer them. He can then sell free from incumbrances. The last words of this subs. include a subsequent incumbrancer (s. 22), to whom therefore a mortgagee may pay any surplus.

As to paying prior charges.

Surplus to subsequent incumbrancer.

The mortgagee must, however, take care that he pays the residue to the right person. This is a liability which, as trustee of the residue he cannot avoid, but in a doubtful case he can pay the money into Court: see *Roberts* v. *Hall*, 24 L. J. (Ch.) 471; Morg. Ch. Orders, 65 (*b*), 5th ed.

As to payment of surplus.

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust connected therewith.

(7.) At any time after the power of sale conferred by this Act has become exerciseable, the person entitled to

S. 21 (7); S. 22.

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exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

Payment of prior incumbrances. Production of deeds.

A mortgagee exercising his power of sale can, under s. 5, pay into Court the amount required to answer prior incumbrances. On a sale by a second or subsequent mortgagee, being a person entitled to redeem (see definition of mortgagor, s. 2, (vi.)), he can, as against a prior mortgagee, under deed subsequent to 1881, obtain production of the title deeds so as to shew the title; and having made the proper payments under s. 5, to answer all prior incumbrancers he is entitled under this subs. to recover the title deeds from the first mortgagee, who would then be a bare trustee of the legal estate.

Recovering deeds.

Mortgagee's receipts, discharges, &c.

22.—(1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

Mortgagee's receipt valid though security satisfied.

The receipt of the mortgagee is a complete protection to a *bonâ fide* purchaser without notice, even though the security should prove to have been satisfied (*Dicker* v. *Angerstein*, 3 Ch. D. 600).

(2.) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

Mortgagee can give receipt for money, &c., included in his security.

This section enables a mortgagee to give a discharge, not only for money arising by sale, but also for money or securities assigned by the mortgage; for instance, to give a receipt for the surplus on a sale by

a prior mortgagee, or in case of a mortgage of a policy or of a reversionary interest in stock, to give a receipt for the policy money or for the stock, and to apply the money in discharge of the debt and costs, and in the case of the stock, to sell the stock for that purpose.

S. 22 (2); S. 23.

MORTGAGES.

Sale; Insurance; Receiver; Timber.

23.—(1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

Amount and application of insurance money.

(2.) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

(i.) Where there is a declaration in the mortgage deed that no insurance is required:

(ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:

(iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorized to insure.

(3.) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4.) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

When insurance money to be expended on reinstating.

Under 14 Geo. 3, c. 78, s. 83, insurance money on houses and buildings must at the request of any person interested, or may in cases of suspicion, be applied in reinstating them: see *Ex parte Gorely*, 4 D. J. & S. 477.

S. 24 (1), (2), (3), (4), (5), (6), (7)

MORTGAGES.

Sale; Insurance; Receiver; Timber.

Appointment, powers, remuneration, and duties of receiver.

24.—(1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2.) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

Under this subs. the receiver acts subject to the rights of any prior mortgagee and to the powers of his receiver (see n. to subs. 8, *post*.)

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorize the receiver to act.

(5.) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6.) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the Court thinks fit to allow, on application made by him for that purpose.

(7.) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any

building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8.) The receiver shall apply all money received by him as follows (namely):

(i.) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and

(ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

(iii.) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

Position of a receiver.

The power to appoint a receiver is by s. 19 given to the mortgagee to the like extent as if in terms conferred by the mortgage deed. The receiver of a second or subsequent mortgagee will therefore (see subs. 3 of this s.) be liable to be superseded by the receiver of a prior mortgagee when appointed, but the receiver for the time being, whether under a first or any subsequent mortgage, will, it is conceived, have under subss. 3 and 4 power to recover and give a legal discharge for rent.

Power to appoint, how proved.

To prove that the person appointing the receiver is actually a mortgagee, the mortgage deed must be produced. Where it is desired to avoid this, a counterpart of the mortgage may be taken. As mortgage deeds will in future be short, the cost of a counterpart will be much less than that of the old receivership deed.

Repairs by receiver.

Any necessary or proper repairs which a mortgagee could not himself make, unless expressly authorized, without incurring the liability of a mortgagee in possession, may be made by the receiver, if directed in writing by the mortgagee under subs. 8 (iii).

S. 25.

MORTGAGES.

Action respecting Mortgage.

Sale of mortgaged property in action for foreclosure, &c.

Action respecting Mortgage.

25.—(1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption, in the alternative.

(2.) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms.

For an order under this subs., see *Weston* v. *Davidson*, W. N. 1882, p. 28.

(3.) But, in an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4.) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

(5.) This section applies to actions brought either before or after the commencement of this Act.

15 & 16 Vict. c. 86, s. 48.

(6.) The enactment described in Part II. of the Second Schedule to this Act is hereby repealed.

(7.) This section does not extend to Ireland.

As to this section, see observations on s. 5, *ante*.

The result of decisions (see Morgan's Chancery Acts, 196, 197, 5th ed.) was to give a very limited operation to the 48th section of 15 & 16 Vict. c. 86, now repealed (see second schedule, Part II.), and replaced by this section.

Former law as to judgment for sale.

An order for sale may be made under this section notwithstanding a judgment *nisi* for foreclosure has been given (*Union Bank of London* v. *Ingram*, W. N. 1882, p. 10), but not, of course, after foreclosure absolute.

Sale notwithstanding *nisi* for foreclosure.

An order for sale need no longer direct the sale to be made, as has been the practice before this Act (see Seton on Decrees, pp. 1396, 802, 4th ed.), subject to the incumbrances of such of the incumbrancers as do not consent (see the suggested minutes of judgment, *post*.) The sum to meet their charges will be paid into Court under s. 5, and any whose charges cannot be so provided for must be made parties.

Form of order under Act.

The owner of, or any incumbrancer on, an incumbered estate can under this section bring an action for sale and application of the proceeds (see note to s. 5, *ante*), but before commencing an action for redemption or sale he should be certain that he can provide the requisite deposit or security for costs, otherwise he may find himself foreclosed.

Course where sale asked by mortgagee. Where by mortgagor.

If the mortgagee asks for a sale under this section, the course of proceeding will be much the same as before the Act in a similar case. If the mortgagor asks for a sale instead of being foreclosed as defendant, or bound to redeem as plaintiff, the course of proceeding is new, and must be settled. It is presumed that a sum to pay expenses of sale will be required to be deposited or secured by the mortgagor, and probably also where the mortgagor is plaintiff, a sum to pay the mortgagee's costs of the action. Either the conduct of the sale should be given to the mortgagee or the reserve price should not, unless he consents, be fixed at a sum less than sufficient to pay his principal, interest, and costs. If this price is not reached, he should at once be entitled to foreclosure. He is clearly entitled to the estate, instead of his debt, if the estate will not produce more. Another course would be to give the conduct of the sale to the mortgagor, where he is plaintiff, with leave for the mortgagee to bid. The mortgagee can thus acquire the estate in place of all or part of his debt: see the suggested minutes of judgment, *post*.

V.—STATUTORY MORTGAGE.

Form of statutory mortgage in schedule.

26.—(1.) A mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in the form given in Part I. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) There shall be deemed to be included, and there

S. 26 (2); S. 27 (1), (2).

shall by virtue of this Act be implied, in the mortgage deed—

STATUTORY MORTGAGE.

First, a covenant with the mortgagee by the person expressed therein to convey as mortgagor to the effect following (namely):

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six calendar months from the day stated for payment of the mortgage money.

Secondly, a proviso to the effect following (namely):

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

Forms of statutory transfer of mortgage in schedule.

27.—(1.). A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (A.) and (B.) and (C.) given in Part II. of the Third Schedule to this Act as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely):

(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due

thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee: S. 27 (2), (3), (4); S. 28. STATUTORY MORTGAGE.

(ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3.) If the deed of transfer is made in the form (B.), there shall also be deemed to be included, and there shall by virtue of this Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following (namely):

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money, or any part thereof, remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4.) If the deed of transfer is made in the form (C.), it shall, by virtue of this Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto, accordingly; but it shall not be liable to any increased stamp duty by reason only of its being designated a mortgage.

A transfer of a mortgage, although further security is given, is only chargeable with duty as a transfer (33 & 34 Vict. c. 97, s. 109; *Wale* v. *Commissioners of Inland Rev.*, 4 Ex. D. 270).

28. In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more trans- Implied covenants, joint and several.

SS. 28, 29, 30 (1).

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ferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect to the share or distinct sum secured to him.

Form of re-conveyance of statutory mortgage in schedule.

29. A re-conveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory re-conveyance of mortgage, being in the form given in Part III. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require.

The object of ss. 26–29 is to enable mortgages, transfers of mortgage, and reconveyances to be made in very short forms. The forms are given in the third schedule, and will probably be only used in quite simple cases, and for loans on small properties.

TRUST AND MORTGAGE ESTATES ON DEATH.

VI.—TRUST AND MORTGAGE ESTATES ON DEATH.

Devolution of trust and mortgage estates on death.

30.—(1.) Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives, for the time being, of the deceased,

shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers. S. 30 (1), (2), (3).

(2.) Section four of the Vendor and Purchaser Act, 1874, and section forty-eight of the Land Transfer Act, 1875, are hereby repealed. TRUST AND MORTGAGE ESTATES ON DEATH.

(3.) This section, including the repeals therein, applies only in cases of death after the commencement of this Act. 37 & 38 Vict. c. 78. 38 & 39 Vict. c. 87.

This section includes copyholds which are "an estate or interest of inheritance" in "tenements," and operates to constitute the executor or administrator devisee of trust and mortgage estates. Whether as to any particular land he is such devisee will be shewn in the same manner as if there were an actual devise. Copyholds included.

The word "hereditaments" includes, more clearly than the word "land," a personal inheritance, as an annuity to one "and his heirs." (See Co. Lit. 2 a, 20 a; *Stafford* v. *Buckley*, 2 Ves. Sen. 170; *Holdernesse* v. *Carmarthen*, 1 Brown, C. C. 377.) Such annuities are sometimes granted by corporations (Manchester, for instance) charged on the borough fund. Also a personal inheritance.

No question as to assent by an executor arises under this section. He is put in the position of devisee, and cannot properly convey a trust estate except to a duly appointed trustee; nor does an executor generally assent to a bequest of leaseholds held in trust, as he only assigns them to a duly appointed trustee; nor to a bequest of leaseholds in mortgage, as he retains the legal estate in order to get in and receive the money. No question as to assent arises.

The constitution of the personal representative to be trustee of course excludes the heir from being trustee, just as a devise would exclude him. Heir excluded as trustee.

It will now be unnecessary, and also useless, to make any devise of trust or mortgage estates. Their devolution is assimilated in all respects to the devolution of a term of years, which must pass to the personal representative. Notwithstanding any devise, the personal representative is the person to convey, and is in all cases the "heir" and "assign" for the purpose of exercising all trusts and powers. Devise of trust estates no longer proper

On the death of a personal representative a new representative must be constituted just as in case of personalty. Then if the executor of a trustee die and there is no executor to his estate, letters of administration must be taken out to the trustee. The title to a freehold trust estate will in fact be made exactly in the same way if it had been a term of years held in trust. Title to freehold trust estate same as leasehold.

Though a trust estate now passes to the personal representative it must still be conveyed to the trustees "and their heirs," or "in fee simple" (see s. 51), in order to give them the fee simple. Trust estate must still be limited to "heirs," &c.

This section renders obsolete, as regards persons dying after 1881, Cases affected.

SS 30, 31.

TRUST AND MORTGAGE ESTATES ON DEATH.

all the decisions as to what words pass trust and mortgage estates, and as to whether the trusteeship passes to the devisees of trust estates, discussed in 1 Jarm. Wills, p. 709 *et seq.* 4th ed. If a testator wishes that his trust estates should go to particular persons, he can appoint them executors for that special purpose: see Wms. Exors. 387, 8th ed.

As to the sect. of the Land Transfer Act, 1875, repealed by this sect., see note to V. & P. A. s. 5, *ante*.

TRUSTEES AND EXECUTORS.

VII.—TRUSTEES AND EXECUTORS.

The following is a summary of the powers conferred on trustees by the C. A., and the provisions relating to trustees and trust estates contained in that Act and the V. & P. A.

Powers of trustees.

Trustees

(i.) May under a trust or power of sale, sell, or concur in selling, by auction or private contract, together or in lots, &c.: C. A. s. 35;

(ii.) May as vendors or purchasers adopt the conditions implied in the C. A. (see s. 66 of that Act), or in s. 2 of the V. & P. A. (see s. 3 of that Act);

(iii.) May give receipts: C. A. s. 36;

(iii.) is retrospective, (i.) and (ii.) are not, and apply so far as a contrary intention is not expressed in the instrument of trust.

(iv.) May manage land of an infant, but in case of a female only while she is unmarried, apply income thereof for maintenance education, or benefit, and accumulate surplus: C. A. s. 42;

(v.) May apply in like manner the income of any property in which any infant is interested: C. A. s. 43;

(iv.) and (v.) apply only so far as a contrary intention is not expressed in the instrument under which the infant's interest arises; (v.) is retrospective, (iv.) is not.

(vi.) Trustees or an executor (but not an administrator), may compound and compromise, and an executor may pay or allow any debt or claim: C. A. s. 37;

(vii.) Powers or trusts given to executors or trustees are exercisable by the survivors or survivor: C. A. s. 38.

(vi.) Is retrospective, (vii.) is not; (vi.) in regard to trustees, and (vii.) in regard to executors or trustees, apply only if a contrary intention is not expressed in the instrument of trust.

(viii.) A married woman being a bare trustee of freeholds or copyholds may convey or surrender them as a feme sole: V. & P. A. s. 6.

The C. A. contains also provisions:

(ix.) For the appointment of new trustees with power to increase the number but without any obligation to appoint more than one where only one was originally appointed or to fill up the original number where more than two were originally appointed: s. 31.

(x.) For the retirement of a trustee without appointing a successor: s. 32;

(xi.) For giving trustees appointed by the Court the powers of original trustees: s. 33;

(xii.) For vesting the trust property on the appointment of a new trustee, or the retirement of a trustee under (x.): s. 34, with the exceptions mentioned in subs. 3;

(xiii.) For the devolution of the trust estate on the personal representatives of a sole trustee dying after 1881, notwithstanding his will: s. 30;

(ix.) to (xi.) are retrospective; (xii.) applies only to deeds appointing new trustees or authorizing retirement under s. 32, executed after 1881; (xiii.) is not retrospective.

Where petitions now unnecessary.

Petitions for the appointment of new trustees ought not to be presented where the power given by the following section can be exercised: *In re Gibbon's Trusts*, W. N. 1882, p. 12.

Appointment of new trustees, vesting of trust property, &c.

31.—(1.) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable, as aforesaid.

A disclaiming trustee is a refusing trustee.

This section includes the case of disclaimer. After disclaimer, which relates back, the person disclaiming is considered as never having been a trustee, but up to the time of disclaimer the trust estate remains vested in him, otherwise there would be nothing to disclaim. The estate being vested in him on trust at the moment of disclaimer, he necessarily is then a trustee, and is a trustee who refuses. The estate passes to him without any express assent, but subject to the right of dissenting: see Lewin, 176, 6th ed.; *Smith* v. *Wheeler*, 1 Vent. 128; *Siggers* v. *Evans*, 5 Ell. & Bl. 367, 382. In *D'Adhemar* v. *Bertrand*, 35 Beav. 19, it was assumed that a disclaiming trustee was included in

S. 31 (1), (2), (3), (4), (5).

TRUSTEES AND EXECUTORS.

Bankruptcy is unfitness.

the words "trustee who shall refuse to act" under Lord Cranworth's Act, s. 27; see also Lewin, 541, 6th ed. A bankrupt trustee is a trustee unfit to act: *Re Barker's Trusts*, 1 Ch. D. 43. He is bound to retire if requested, and may be removed under s. 117 of the Bankruptcy Act, 1869: *Re Adams' Trust*, 12 Ch. D. 634; and a new trustee may be appointed in his place under this section: *Re Gibbons' Trust*, W. N. 1882, p. 12.

Where power does not extend to all cases provided for by this s.

If the power to appoint new trustees given by a settlement does not extend to all the cases provided for by this section, if for instance it does not apply where a trustee remains out of the United Kingdom for more than twelve months, then in the omitted cases there is not any "person or persons nominated for the purpose by the instrument creating the trust," and the appointment should be made under this section by the surviving or continuing trustees. This holds good whether the settlement be made before or after the commencement of this Act. In settlements made since Lord Cranworth's Act, the form of the power will generally be "that A. B. shall have power to appoint new trustees" without specifying in what cases. Under this form, the power being unlimited, A. B. will be the "person nominated for the purpose" within the meaning of this section.

(2.) On an appointment of a new trustee, the number of trustees may be increased.

This subs. is applicable to the appointment of more than one new trustee, as singular imports the plural, see n. to s. 50, *post*.

(3.) On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

This subs. must be read in connection with s. 34 (1), *post*, rendering a conveyance of the trust property unnecessary on the appointment of a new trustee, except in cases within subs. 3 of that s.

(5.) Every new trustee so appointed, as well before as

after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

S. 31 (5), (6), (7), (8); S. 32 (1).

TRUSTEES AND EXECUTORS.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

Whether omission of particular cases shews contrary intention.

Where under an instrument, whether dated before this Act or subsequently, a limited power to appoint a new trustees is given to a specified person, say, in case only of a trustee refusing, it is conceived that the power given to the surviving or continuing trustee by subs. (1) applies to all the other cases there mentioned, and that the omission to provide for all those cases is not sufficient to shew a contrary intention within this subs.

(8.) This section applies to trusts created either before or after the commencement of this Act.

Power retrospective.

This and the subsequent sections included in Part VII. of this Act replace Part III. of Lord Cranworth's Act, which is repealed (see second schedule, Part III.). The power to appoint new trustees applies to all instruments past and future, including those dated before Lord Cranworth's Act, and to which that Act did not apply.

Retirement of trustee.

32.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

S. 32 (1), (2), (3), (4); S. 33.

TRUSTEES AND EXECUTORS.

On discharge of a trustee the other have all powers.

Under this section the continuing trustees alone will have the powers of the original trustees. The due discharge of one of several trustees leaves the others whole and sole trustees as in case of a disclaimer: *Cafe* v. *Bent*, 5 Hare, 37. If the power be merely personal, unconnected with property, for instance to consent to a marriage, it is not a case of trusteeship within these sections.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

This subs. must be read in connection with s. 34 (2), *post*, rendering a conveyance of the trust property unnecessary on the retirement of a trustee except in cases falling within subs. 3 of that s.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act.

Powers of new trustee appointed by Court.

33.—(1.) Every trustee appointed by the Court of Chancery, or by the Chancery Division of the Court, or by any other Court of competent jurisdiction, shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(2.) This section applies to appointments made either before or after the commencement of this Act.

Retrospective.

As to exercise of legal powers.

This section replaces s. 27 of Lord Cranworth's Act, and applies to all instruments past and future. A new trustee appointed by the Court under its ordinary jurisdiction in equity could not exercise a legal power, as, for instance, a power of sale in a settlement operating by revocation and appointment of uses (see *Newman* v. *Warner*, 1 Sim. N.S. 457, 461). To enable a new trustee to exercise a legal power it was necessary that the appointment should be made on petition under the Trustee Act, 1850: see s. 33 of that Act. See Ld. C.'s Act, s. 27, as to trustees appointed by Court of Chancery, and see Morg. Ch. Ord., p. 101 (*a*). It is conceived that under this section a trustee appointed by judgment or order in an action simply, and not entitled in the Trustee Acts, may validly exercise legal powers, and that there will be no necessity for a petition under the Trustee Acts.

34.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

Vesting of trust property in new or continuing trustees.

Vesting declaration applicable on all appointments of a trustee.

This section applies to all deeds executed after the commencement of the Act by which a new trustee is appointed to perform "any trust," and is not confined to cases where the powers of the Act are exercised. The vesting declaration may therefore now be used on an appointment of a trustee in the ordinary mode under a power in a settlement, and whether the settlement be dated before or after the commencement of the Act. The vesting declaration must be contained in the deed appointing or discharging the trustee.

Must be on deed of appointment.

Must be by deed.

It must be by deed and not by writing merely, though the mere appointment of a trustee under s. 31 may be by writing only. Thus as under the old practice a deed will always be necessary where there is property to transfer, and will be chargeable with stamp duty on the appointment and also on the vesting order (*Hadgett* v. *Commissioners of Inland Revenue*, 3 Ex. D. 46). In the case of a chose in action notice of assignment should also be given.

Stamp duties.

Chose in action.

No vesting declaration required for equities.

The aid of this section is required only for the purpose of vesting a legal interest. The mere appointment of a new trustee or several new trustees in itself operates to vest all equitable interests in the persons who are the trustees (*Dodson* v. *Powell*, 18 Law Journ. (Ch.) 237), and the object of this section is to extend that principle so far as is not inconvenient to legal estates and rights. It may, however, be convenient to have the proper declaration in all cases.

Effect of vesting clause.

The words "who by virtue of the deed become and are *the* trustees *for performing the trust*" include the old trustees as well as the new. The new trustees become trustees by virtue of the deed, but do not become the trustees for performing the trust, unless they are the sole trustees. The new and the old trustees together become the trustees for performing the trust. But where there are no old trustees, or none continuing to act, the new trustees solely become the trustees for performing the trust.

As to where there should be separate deed.

Cases occur, as where lands are purchased with settlement money, in which it may be convenient to have a separate actual conveyance. The declaration which effects the vesting of the other property subject to the settlement will then omit the property separately conveyed. There

S. 34 (2), (3), (4), (5); S. 35 (1).

must be an actual conveyance where the deed does not contain an appointment of a new trustee or discharge of a trustee.

TRUSTEES AND EXECUTORS.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under Act of Parliament.

Reasons for exceptions.

The objects of subs. 3 are to save the rights of the lord as regards customary land, to prevent the trusts of the money appearing on the title of land mortgaged, and to reserve to companies and other bodies the right to require transfers of their stock to be made in the statutory form.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act (*a*).

(5.) This section applies only to deeds executed after the commencement of this Act.

Register searches.

(*a*) Subs. 4 makes it necessary to search the deeds register against any person having power to appoint new trustees as well as against the trustees.

Power for trustees for sale to sell by auction, &c.

35.—(1.) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter, as the trustees think fit, with power to vary any contract for sale, and to buy

in at any auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss.

S. 35 (1), (2), (3); S. 36.

TRUSTEES AND EXECUTORS.

This s. does not replace Part I. of Lord Cranworth's Act, which is not repealed; it merely operates to supply the common form provisions of a trust for sale or a power of sale.

As to the duty of trustees where trust property is sold along with other property not subject to the trust: see *Rede* v. *Oakes*, 4 D. J. & S. 505; *In re Cooper and Allen's Contract*, 4 Ch. D. 802.

As to sale of trust property along with other property.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Act.

A sufficient trust for sale may now be created by using the words, "Upon trust to sell the said premises," and a sufficient power of sale by using the words "with power to sell the said premises," without more.

Words required in trust for or power of sale.

36.—(1). The receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

Trustees receipts.

(2.) This section applies to trusts created either before or after the commencement of this Act.

This section replaces and is more comprehensive than s. 29 of Lord Cranworth's Act, which was confined to money. The power to give receipts conferred by 22 & 23 Vict. c. 35, s. 23, had the same limited operation.

Receipt clause extended.

Where trustees for sale, having no express power to give receipts, had sold to a railway company, this power was held to apply, and the purchase-money, which had been paid into Court, was ordered to be paid to them without serving the *cestuis que trust*: *In re Thomas's Settlement*, W. N. 1882, p. 7.

Application of this section.

SS. 37, 38 (1).

TRUSTEES AND EXECUTORS.

Power for executors and trustees to compound, &c.

37.—(1.) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An executor, or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) As regards trustees, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies to executorships and trusts constituted or created either before or after the commencement of this Act.

Does not apply to an administrator.

This section does not apply to an administrator, who might be merely a creditor, or some one not necessarily a proper person to be invested with such large powers: see *In re Clay and Tetley*, 16 Ch. D. 3.

Two or more trustees must act together.

It is conceived that where there are two or more trustees they must all act together under this section, except in trusts of a public character or where there is a special authority enabling the majority to bind the minority: see Lewin on Trusts, 228, 6th ed.

Powers to two or more executors or trustees.

38.—(1.) Where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to executorships and trusts constituted after or created by instruments coming into operation after the commencement of this Act.

S. 38 (2); SS. 39, 40.

TRUSTEES AND EXECUTORS.

Compare the Act 21 Hen. VIII. c. 4.

This section removes any difficulty as to whether one surviving executor can sell under a devise to executors to sell (see Sug. Powers, 126 *et seq.*, 8th ed.); but it does not affect the rule that a power to two or more by name, who are not executors, being a personal power, will not survive (Sug. Powers, 128, 8th ed.).

As to survivor of executors selling.

VIII.—MARRIED WOMEN.

MARRIED WOMEN.

39.—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.

Power for Court to bind interest of married woman.

(2.) This section applies only to judgments or orders made after the commencement of this Act.

Before this Act the Court had no power to bind the interest of a married women who was restrained from anticipation, however beneficial it might be to her to do so: see *Robinson* v. *Wheelwright*, 21 Beav. 214; 6 D. M. & G. 535; *Tussaud* v. *Tussaud*, 9 Ch. D. 375, *per* James, L.J.; *Smith* v. *Lucas*, 18 Ch. D. 531.

Cases affected.

Applications under this section must be made by summons in Chambers, s. 69 (3), *post*, and not by petition: *Re Lillwall's Settlement*, W. N. 1882, p. 6.

Applications under this section.

40.—(1.) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.

Power of attorney of married woman.

(2.) This section applies only to deeds executed after the commencement of this Act.

This section when originally inserted had more special reference to the clauses struck out in the House of Commons enabling married women to convey by deed simply without acknowledgment. An

SS. 40, 41, 42 (1).

MARRIED WOMAN.

acknowledged deed is necessarily incapable of being executed by attorney, but under this section a power of attorney will be effectual as regards all other deeds or acts capable of being executed or done by a married woman.

For further provisions as to powers of attorney, see ss. 46–48, *post*; and see s. 50, *post*, enabling a married woman to convey freehold land, as defined by s. 2 (ii.), *ante*, and choses in action to her husband alone or jointly with another person.

IX.—INFANTS.

INFANTS.

Sales and leases on behalf of infant owner. 40 & 41 Vict. c. 18.

41. Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877.

Sale of infant's land in fee simple.

This section enables the Court for the benefit of an infant to sell his fee simple estate, not only where he has acquired it under a settlement (see definition of "settlement" in the Settled Estates Act, 1877), but also where it has come to him by descent or devise in fee. Before this Act the Court had no authority to sell the real estate of an infant upon the mere ground that a sale would be beneficial (see *Calvert* v. *Godfrey*, 6 Beav. 97; and cases cited, Dart, V. & P. 1223 (*s*), 5th ed.).

Leases and sales of infant's land generally.

It also enables the Court to authorize leases and sales of the infant's land of every tenure, and it is conceived that the guardians of an infant may under this section, and ss. 46 and 49 of the Settled Estates Act, 1877, grant leases for twenty-one years of the infant's land without the authority of the Court. As to the power of the Court to authorise leases of infant's land under 11 Geo. 4 & 1 Will. 4, c. 65, see Simpson on Infants, p. 334, and *Re Letchford*, 2 Ch. D. 719.

All the powers of the Settled Estates Act, 1877, may be executed by the guardians on behalf of the infant (s. 49).

Management of land and receipt and application of income during minority.

42.—(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this

purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

S. 42, (1), (2), (3), (4).

INFANTS.

Meaning of settlement.

The word "settlement" includes all settlements by whatever instrument made, whether deed, will, writing, or Act of Parliament; this is clear from subs. 7, which refers to the instrument by which the settlement is made, and from the definition of "instrument," s. 2 (xiii.).

Applies where legal estate vested in trustees.

This section includes the case where an infant takes by descent, also where the legal estate is vested in trustees upon trust to pay the rents and profits to an infant. By s. 2 (iii.) possession includes receipt of income, and income includes rents and profits.

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem

S. 42 (4), (5), INFANTS.

proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

Payment of income to parent or guardian.

The power in this subs. and in s. 43 (i.) to pay income to the parent or guardian for the infant's maintenance, education, or benefit, necessarily implies a power for the parent or guardian to give receipts, and exempts a person paying from seeing to the application of the money, just as a like power to trustees is necessarily implied where they are directed to sell land and divide the proceeds amongst infants (*Sowarsby* v. *Lacy*, 4 Mad. 142; *Lavender* v. *Stanton*, 6 Mad. 46).

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

(i.) If the infant attains the age of twenty-one years, then in trust for the infant;

(ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge; but

(iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee

simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate;

S. 42, (5), (6), (7), (8); S. 43 (1).

INFANTS.

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

How far this section agrees with the usual form.

This section goes somewhat beyond what can be done by deed. The trust extends over the minority of a tenant in tail by descent, as well as the minority of a tenant in tail by purchase, which in a deed or will would be a void trust (see 1 Jarman, 274, 4th ed.) To this there is practically no objection, as the same accumulation would take place by operation of law or under the direction of the Court in an administration action. Under subs. 5 the trust for disposal of the proceeds of accumulation is strictly confined within what could be done by deed or will.

Application by trustees of income of property of infant for maintenance, &c.

43.—(1.) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

S. 43 (1), (2), (3), (4).

INFANTS.

This s. does not apply to property the vesting of which is postponed beyond the age of twenty-one years. In all cases where the vesting is so postponed maintenance, education, and accumulation clauses will still be necessary.

Does not apply where vesting is after 21.

As to the implied power of the parent or guardian to give receipts for income, see n. to s. 42 (4).

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

Applies to all cases where income goes with capital.

This section replaces s. 26 of Lord Cranworth's Act, and is so worded as to avoid the question raised in the case of *In re George*, 5 Ch. D. 837, on the words in that Act, "the income to which such infant may be entitled in respect of such property." In the case of a simple pecuniary legacy to an infant contingent on his attaining twenty-one, and carrying interest in the meantime, the executors being bound to set it apart and accumulate the income, it is conceived that in the absence of any direction to the contrary, the effect of this section is, that if the infant dies under twenty-one the residuary legatee takes only the accumulations representing the unapplied residue of the income (see *In re Cotton*, 1 Ch. D. 232). On the other hand if no interest is payable on the legacy till the infant attains twenty-one, there is no income to which the section can apply, and the residuary legatee takes the income of the residue without deduction till the legacy becomes vested. The short effect of the section seems capable of being stated thus: Where the income will go along with the capital if and when the capital vests, then the income is applicable under the section for the benefit of the infant, otherwise not.

S. 42 authorizes the application of the rents and profits of land as defined by s. 2 (ii.) for the maintenance, education, or benefit of an infant only where the instrument under which the interest of the infant arises comes into operation after 1881, but s. 43 applies to any property as defined by s. 2 (i.), whether the instrument comes into operation after 1881 or not.

SS. 43, 44 (1), (2), (3).

INFANTS.

Difference between s. 42 and s. 43.

X.—RENTCHARGES AND OTHER ANNUAL SUMS.

RENTCHARGES AND OTHER ANNUAL SUMS.

Remedies for recovery of annual sums charged on land.

44. (1.) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

(2.) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

(3.) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his

S. 44 (3), (4), (5), (6).

RENTCHARGES AND OTHER ANNUAL SUMS.

continuance in possession, and all costs and expenses occasioned by nonpayment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4.) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by nonpayment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6.) This section applies only where that instrument comes into operation after the commencement of this Act.

How agrees with usual form.

This section gives the remedy ordinarily inserted in settlements, for enforcing payment of a rentcharge, except that instead of a term, power only is given to limit a term. No more seems required, as the remedy by means of a term is rarely wanted, and if wanted the term can be created.

Why a term is necessary.

Where by reason of a lease being prior in date to the limitation of a rentcharge, or being granted under a power in a settlement which gives it priority to a rentcharge, the lessee's title is paramount to the rentcharge, the remedy by distress is not available, the lessee

being only liable to pay his rent, and this rent is only payable to the reversioner. Hence the necessity for a power to create a term.

Redemption of quit-rents and other perpetual charges.

45.—(1.) Where there is a quit-rent, chief-rent, rentcharge, or other annual sum issuing out of land (in this section referred to as the rent), the Copyhold Commissioners shall at any time, on the requisition of the owner of the land, or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

(2.) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the Commissioners.

(3.) On proof to the Commissioners that payment or tender has been so made, they shall certify that the rent is redeemed under this Act; and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent.

(4.) Every requisition under this section shall be in writing; and every certificate under this section shall be in writing, sealed with the seal of the Commissioners.

(5.) This section does not apply to tithe rentcharge, or to a rent reserved on a sale or lease, or to a rent made payable under a grant or licence for building purposes, or to any sum or payment issuing out of land not being perpetual.

(6.) This section applies to rents payable at, or created after, the commencement of this Act.

(7.) This section does not extend to Ireland.

Difficulty in providing for rents of limited owners.

This section gives power to an owner to purchase up certain rents issuing out of his land. It applies only where there is a person seised in fee simple of the rent, or able (as in case of trustees with a power of sale) to give a discharge for the purchase-money, and will have a limited operation. There is difficulty in any other case on account of the expense of dealing with the purchase-money, generally small. Perhaps hereafter

SS. 45, 46, 47.

RENTCHARGES AND OTHER ANNUAL SUMS.

some means may be found of enabling a landowner to purchase up and extinguish all rents including tithe rentcharge.

The rents referred to in this section, except a perpetual rentcharge or annuity, are incidents of tenure, and would not be incumbrances within s. 5.

On whom expense falls.

The entire expense of redeeming the rent necessarily falls on the person redeeming. He has to procure the certificate of the Copyhold Commissioners as to the amount to be paid, and as to payment or tender of that amount. The person entitled to the rent has nothing to do except to receive the redemption money.

POWERS OF ATTORNEY.

XI.—POWERS OF ATTORNEY.

Execution under power of attorney.

46.—(1.) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

(2.) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

This section had especial reference to clauses struck out in the House of Commons, but may still be of use in some cases (see next section).

Under this section the execution after 1881 of an instrument by an attorney in his own name will not be invalid. It is not necessary, though it is proper, to express that he executes as attorney, or on behalf of his principal, or to use words to the like effect.

Payment by attorney under power without notice of death, &c. good.

47.—(1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

SS. 47, 48 (1), (2), (3), (4), (5).

POWERS OF ATTORNEY.

(3.) This section applies only to payments and acts made and done after the commencement of this Act.

This section is supplementary to 22 & 23 Vict. c. 35, s. 26, which applied only to trustees, executors, and administrators. It is still necessary for a purchaser taking a conveyance under power of attorney to ascertain that the principal is alive at the time of execution of the conveyance. The clauses intended to meet this difficulty were struck out in the House of Commons. But the section seems to enable the attorney to give a valid discharge for the purchase-money, so that where the contract is binding on the vendor, the purchaser would obtain a good equitable title. The legal estate would remain outstanding, but a conveyance could be obtained from the personal representatives under s. 4 or s. 30. Notwithstanding this section, it will be best still to continue the old practice of depositing or retaining the purchase-money until it is ascertained that the vendor survived the date of execution by his attorney.

As to completing purchase under power of attorney.

48.—(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court of Judicature.

Deposit of original instruments creating powers of attorney.

(2.) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(4.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5.) General Rules may be made for purposes of this section, regulating the practice of the Central Office, and

S. 48 (5), (6); SS. 49, 50, 51 (1).

prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein.

POWERS OF ATTORNEY.

The General Rules under this s. will, if issued, be given in the Appendix.

(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this Act.

Where a person upon going abroad, or for any other reason, gives a general power of attorney, there is always a difficulty in securing its production for the benefit of those whose rights depend on an exercise of the power, the original document being necessarily retained for subsequent use. Under this section the original may be deposited, and may be inspected at any time by all persons interested, and an office copy may be obtained.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

XII.—CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

Use of word grant unnecessary

49.—(1.) It is hereby declared that the use of the word grant is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal.

(2.) This section applies to conveyances made before or after the commencement of this Act.

As to necessity for word "grant."

Since the Act 8 & 9 Vict. c. 106, s. 2, enabled land in possession to be conveyed by grant, it has been the practice to use that word in conveyances of freehold land, though probably not necessary, if the intent to pass the estate is clear (see *Chester* v. *Willan*, 2 Wms. Saund. 96a, (1); *Shove* v. *Pincke*, 5 T. R. 124). This section is intended to remove any question as to the necessity of so doing. In future the word "convey" will probably be used where convenient as to both freeholds and leaseholds (see s. 2 (v.), s. 57, and Forms in 4th schedule of this Act). It is not necessary to use the word "grant" except where it implies covenants under Acts of Parliament, as under s. 32 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18).

Conveyance by a person to himself, &c.

50.—(1.) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by

a wife to her husband, alone or jointly with another person. S. 50 (1), (2); SS. 51, 52 (1).

(2.) This section applies only to conveyances made after the commencement of this Act.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

The first part of this section is supplementary to 22 & 23 Vict. c. 35, s. 21, which applies only to personal property, and is only intended to apply to a conveyance in joint tenancy, as in the ordinary case of the appointment of a new trustee. If land conveyed by A. is to be held in common by himself and B., the proper course is either for A. to convey an undivided share to B., or to convey the entirety to B. to the use of himself and B. as tenants in common. The latter form would be adopted only to make covenants run with the land.

How land to be conveyed to tenants in common.

It will be borne in mind in reading this and many other sections of the Act that under 13 & 14 Vict. c. 21, s. 4, the singular includes the plural in Acts of Parliament.

Singular includes plural.

51.—(1.) In a deed it shall be sufficient, in the limitation of an estate in fee simple, to use the words in fee simple, without the word heirs; and in the limitation of an estate in tail, to use the words in tail without the words heirs of the body; and in the limitation of an estate in tail male or in tail female, to use the words in tail male, or in tail female, as the case requires, without the words heirs male of the body, or heirs female of the body.

Words of limitation in fee or in tail.

(2.) This section applies only to deeds executed after the commencement of this Act.

See this section illustrated in Fourth Schedule, Form IV.

The principal effect of this section is to shorten the expressions required in a deed to create estates tail and cross remainders. There still remains the distinction between deeds and wills that in a will many expressions, such as "A. and his assigns for ever," "A. and his issue," &c., will create an estate of inheritance, but in a deed no words are sufficient except either the old technical words or the words authorized by this section.

Short expression for estate tail, &c.

This section applies only to deeds, therefore a surrender of copyholds should be made in the same terms according to the custom as before the Act.

Surrender of copyholds to be expressed as heretofore.

52.—(1.) A person to whom any power, whether coupled with an interest or not, is given may by deed release, or contract not to exercise, the power.

Powers simply collateral.

S. 52 (2); SS. 53, 54 (1).

(2.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

This section removes the difficulty which arose from the indestructibility of powers simply collateral, that is powers given to a person, not taking any estate, to dispose of or charge the estate in favour of some other person (see Sug. Powers, 47, 49, 8th ed.).

Release by married woman must be acknowledged.

A married woman must acknowledge the deed of release in cases where before this Act acknowledgment was necessary to bind her interest in the subject matter to which the power relates: Sug. Powers, 92, 8th ed.; see also *Chorley* v. *Lings*, L. R. 4 C. P. 374; *The Queen* v. *Harrald*, L. R. 7 Q. B. 361.

Construction of supplemental or annexed deed.

53.—(1.) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

(2.) This section applies to deeds executed either before or after the commencement of this Act.

Practical use of this s. 53.

The enactment in this section, though not necessary, seems required to introduce the practice of using, instead of an indorsed deed, a separate deed in a similar form referring to but not reciting the previous deed. The reference to the previous deed need only be such as clearly to identify it. For this purpose the date and the parties will in most cases be sufficient (see Fourth Schedule, Form II.). If deeds be made up bookwise in a form now common, the supplemental deed can be attached after execution, and both together will be easily readable. A further charge cannot as a general rule be made by indorsement on the mortgage deed, which the mortgagee will not allow out of his possession, but a supplemental deed of further charge can be sent to the mortgagor for execution, and afterwards annexed by the mortgagee to his mortgage deed, without letting the latter go out of his possession.

Any document may be supplemental.

This s. only speaks of a deed supplemental to another deed, but any document may also be made supplemental to a deed or to any other document.

Receipt in deed sufficient.

54.—(1.) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.

(2.) This section applies only to deeds executed after the commencement of this Act. S. 54 (2); SS. 55, 56.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

55.—(1.) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof. Receipt in deed or indorsed, evidence for subsequent purchaser.

(2.) This section applies only to deeds executed after the commencement of this Act.

This and the preceding section make the receipt in the body of the deed sufficient evidence of payment. Formerly that receipt was in equity little more than a mere form: see *Kennedy* v. *Green*, 3 My. & K. 699, 716; *Greenslade* v. *Dare*, 20 Beav. 284, 292. Effect of receipt in body of deed.

56.—(1.) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt. Receipt in deed or indorsed, authority for payment to solicitor.

(2.) This section applies only in cases where consideration is to be paid or given after the commencement of this Act.

This s. meets the dictum of L.J. Turner in *Viney* v. *Chaplin*, 2 De G. & J. 468, 482, making an additional document necessary where the purchase-money was to be paid to the vendor's solicitor, namely an express authority to pay to him: see also *Ex parte Swinbanks*, 11 Ch. D. 525.

It makes no alteration in the mode of the procedure on the completion of a purchase, but only gives an additional security to a purchaser. The absence of a written authority to a solicitor to receive consideration money was never relied on in practice as preventing payment. Each person entitled to receive acted as if the execution by him of the deed and indorsed receipt enabled the producer of the deed Practice not altered.

SS. 56, 57, 58 (1).

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

so executed to receive without further authority. This was the law as supposed to be before *Viney* v. *Chaplin*, and is now the law in reality. In practice it is perfectly well-known to all parties who is the solicitor acting for each person and entitled to receive; the payment will be made to him, and a purchaser knowingly making payment to the wrong person would not be absolved by this section. If any one of several persons entitled to receive chooses not to let the deed out of his possession, when executed by him, his only course is to attend on completion.

Sections 54 and 55 render unnecessary the indorsed receipt and the separate authority to pay, and prevent the difficulty and delay sometimes caused by the omission to sign an indorsed receipt. The one receipt now required may be either in the body of the deed or indorsed.

Payment by cheque.

This s. does not and could not properly authorize payment by cheque instead of in cash. If, however, payment is made by cheque and accepted by the solicitor and the cheque is afterwards honoured, the purchaser will be safe. It is immaterial whether the money is paid by the purchaser's solicitor in bank notes handed to him for the purpose, or by the purchaser's banker in exchange for the purchaser's cheque. In each case the money is paid to the solicitor producing the deed, and the section applies. If the cheque is not honoured there is no payment, and the section does not apply. The only person then affected is the solicitor accepting the cheque. If he has done so without authority, he may be liable to his own client for the consequences.

Payment to several on shares.

Where the purchase-money is payable among several persons, the solicitor of each must arrange to attend, and, if necessary, notice may be given to the solicitor of the person making the payment not to pay unless specified persons attend to receive. In most cases this is a matter which will cause no difficulty, the old practice before *Viney* v. *Chaplin* being simply restored.

Sufficiency of forms in Fourth Schedule.

57. Deeds in the form of and using the expressions in the Forms given in the Fourth Schedule to this Act, or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient.

The forms referred to are not in any way directory. They are merely illustrative of the modes in which the Act may be applied in practice.

Covenants to bind heirs, &c.

58.—(1.) A covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

(2.) A covenant relating to land not of inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators and assigns, and shall have effect as if executors, administrators, and assigns were expressed. S. 58 (2), (3); S. 59 (1).

(3.) This section applies only to covenants made after the commencement of this Act. CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

This section renders unnecessary the mention of "heirs and assigns," or "executors, administrators, and assigns," of the covenantee for the purpose of making a covenant run with the land, but it does not make a covenant so run where it would not so run if the "heirs and assigns," or "executors, administrators, and assigns" were expressed.

In the case of a lease s. 10 annexes to the reversion the *benefit* of all the *lessee's* covenants, and so gives this benefit to "assigns" though not mentioned, and also though the covenant be not entered into with the reversioner, as where the lessor has a mere power; and s. 11 annexes the *obligation* of a *lessor's* covenant to the reversionary estate, and so binds assigns though not mentioned where the lessor has power to bind that estate. In all other cases the obligation of a covenant relating to land is carried no further than before the Act, and to bind the "assigns" they must still be mentioned where mention was necessary before the Act, for instance, in a lease where the covenant concerns a thing not in *esse* at the time of the demise, as to build a wall (*Spencer's Case*, 1 Smith L. C. 8th ed. 68; Woodfall, L. & T. 147, 11th ed.). In cases other than those between landlord and tenant it is doubtful whether the obligation of any covenant runs with the land at law, independently of the Judicature Act, 1873 (36 & 37 Vict. c. 66, ss. 24, 25 (11)), but it does run in equity with notice, where the intention is clear that the assigns should be bound (*Tulk* v. *Moxhay*, 2 Ph. 774, where the assigns were mentioned; *Wilson* v. *Hart*, L. R. 1 Ch. Ap. 463, where the assigns were not mentioned), except where the covenant imposes an unreasonable burden on land, as in *Keppell* v. *Bailey*, 2 My. & K. 517, 535. The result seems to be that it will be prudent still to make all covenants relating to land "for assigns" where the benefit, and also "with assigns" where the burden, is intended to run with the land.

Cases where "assigns" must be mentioned.

Covenants not between landlord and tenant where assigns have notice.

59.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, though not expressed to bind the heirs, shall operate in law to bind the heirs and real estate, as well as the executors and administrators and personal estate, of the person making the same, as if heirs were expressed. Covenants to extend to heirs, &c.

S. 59 (2), (3), (4); S. 60.

(2.) This section extends to a covenant implied by virtue of this Act.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the terms of the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

Priority of judgment creditor.

Though by the Act 32 & 33 Vict. c. 46, specialty debts binding the heirs rank no higher in the administration of assets than other debts against the land, there is still, under 11 Geo. 4 & 1 Will. 4, c. 47, ss. 6 and 8, the power to sue the heir or devisee personally for such debts, and obtain judgment against him to the extent of the assets which have devolved on him. Accordingly a creditor having so obtained judgment takes priority of other creditors against the land, and recovers without any necessity for probate or letters of administration, which are only required to support proceedings in an administration action. All covenants will now bind the heir or devisee so as to enable an action to be brought against him personally, though the heir is not expressly mentioned. It has always been unnecessary expressly to mention executors or administrators.

Effect of covenant with two or more jointly.

60.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond, or obligation devolves.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract,

bond, or obligation made or implied after the commencement of this Act.

ss. 60, 61 (1).

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

This section must be read in connection with ss. 58 and 59. The effect of the three last preceding sections taken together is that every covenant may now be made in the simple form: "A. hereby covenants with B. that," &c.; or "A. hereby covenants with B. and C. that," &c., except covenants relating to land in which, for the reasons given in the note to s. 58, A. should covenant for himself and his assigns. The covenant will thus bind the heirs, and where relating to land of any tenure the benefit of it will run with the land as if the old full form applicable to the case had been used; but where the burden is intended to run with the land the assigns of the covenantor should be mentioned. Further it will be sufficient as regards the acts to be done under the covenant, to say "that A. will pay to B.," or "that A. will at the request of B. do all such acts," &c.; "that A. will pay to B. and C.," or "that A. will at the request of B. and C. do all such acts," &c. Under covenants in this form the heirs or assigns of B. (in case for instance of a covenant to pay rent of freehold land to B. the lessor), or the executors or administrators of B. (as in case of a mortgage debt payable to B.) will stand precisely in the place of B. Also the survivor of B. and C., or the heirs or assigns, or the executors, administrators, or assigns of such survivor, as the case may be, will stand precisely in the place of B. and C. as if the old full form of covenant had been used. Thus not only are all covenants greatly shortened, but the form of a covenant with several persons is reduced to that of a covenant with one person. The same principle applies to any contract under seal, as, for instance, the proviso for redemption or the proviso for reduction of the rate of interest on a mortgage, and to contracts in a marriage settlement.

Effect of advance on joint account, &c.

61.—(1.) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the

S. 61 (2), (3); S. 62.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained.

(3.) This section applies only to a mortgage, or obligation, or transfer made after the commencement of this Act.

The ordinary joint account clause had two objects: (1) To rebut the presumption in equity that the money was advanced in equal shares, and to convert it into a joint advance; (2) The advance being originally joint, to enable the money, after the death of one of the persons making the advance, to be paid to the survivors or the survivor, or his representatives, without inquiry whether the joint account had been severed, the clause operating in fact as a contract that a severance (if any) should not affect the right of the survivor to give a receipt. Both these objects are effected by the present section. The section applies either where the advance is expressly stated to be on a joint account, or where the security is not expressly made to persons in shares, so that an expression of the joint account is not necessary, though it is convenient as a direct statement of the rights of the mortgagees.

Grants of easements, &c., by way of use.

62.—(1.) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty, or privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty, or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him, shall have, use, and enjoy the same accordingly.

(2.) This section applies only to conveyances made after the commencement of this Act.

The Statute of Uses, 27 Hen. VIII. c. 10, s. 1 (by force, as it seems,

of the words, "of and in such like estates"), enabled *estates* only to be raised by way of use, and s. 5 enabled rent-charges to be raised by way of use. The statute does not contain any section applicable to the creation of other interests *de novo* (see *Beaudely* v. *Brook*, Cro. Jac. 189; Bac. Ab. Uses, F.), but s. 1 enabled them when created for a freehold interest to be conveyed to uses, as being hereditaments. Consequently under a conveyance to uses or under a power of sale and exchange, a right of way or other easement or liberty could not be created, but being in existence could be conveyed.

SS. 62 (3), 63, 64.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

"Deriving title" means by and according to law, consequently this s. does not confer any new power of transmitting title, nor enable the creation of any new kind of easement, nor make assignable that which was not by law assignable. For instance, a right of way in gross cannot be created capable of assignment: see *Ackroyd* v. *Smith*, 10 C. B. 164. That there may be an "estate" in an incorporeal hereditament, see Statute of Uses, s. 5, which speaks of an estate in an annual rent.

No new easements can be created.

63.—(1.) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

Provision for all the estate, &c.

(2.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(3.) This section applies only to conveyances made after the commencement of this Act.

The object of this section is to abolish the "all estate" clause. The section does not say that every conveyance shall be deemed to contain this clause, which might be inconsistent with the terms of conveyance, as the word "conveyance" includes "lease" (see s. 2 (v.)). It merely confirms a previously existing rule of law, and applies the rule in the same cases, namely, where a contrary intention is not expressed. Even with an express "all estate" clause a lease could not pass the fee for want of the word "heirs" or "fee simple," and also because the premises would be controlled by the habendum: Co. Lit. 183 a; *Buckler's Case*, 2 Co. 55; Shep. Touch. 113.

"All estate clause."

64. In the construction of a covenant or proviso, or other provision, implied in a deed by virtue of this Act,

Construction of implied covenants.

SS. 64, 65, (1), (2).

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

LONG TERMS.

XIII.—LONG TERMS.

Enlargement of residue of long term into fee simple.

65.—(1.) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time (*a*), or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

Presumption of release of a rent.

(*a*) The Statute of Limitations, 3 & 4 Will. 4, c. 27, does not apply to rent reserved on a lease (*Grant* v. *Ellis*, 9 Mees. & Welsby, 113; Sugden, Real Prop. Stat. 36, 63, 2nd ed.), but before that Act presumption from lapse of time operated as a bar in cases where the old Act did not apply (*Doe* v. *Prosser*, Cowper, 217); and it is conceived that the same principle would hold now, so that after non-payment of rent for a long period it would be presumed to have been released: see *Eldridge* v. *Knott*, Cowper, 214.

(2.) Each of the following persons (namely):

(i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether

with restraint on anticipation or not, and then without his concurrence;

(ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;

(iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not;

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(3.) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term (*b*).

Section applies to cases where reversion has no appreciable value.

This section enables the conversion into fee simple of a long term in a case where it is practically impossible that evidence of title to the reversion in fee could exist at the expiration of the term, at least where the reversion is not vested in a corporation, and where also if such evidence did exist the value of the reversion must be infinitesimally small at the time of conversion.

Old mode of acquiring fee.

Before the Act 8 & 9 Vict. c. 106, a tortious fee, and for all practical purposes an actual fee, could be acquired by means of a feoffment: see 1 Sand. Uses, 30, 5th ed.; 2 *ib.* 14 *et seq.* But s. 4 of that Act took away the tortious effect of a feoffment, and rendered impossible the acquisition of a fee in place of a term. The usual origin of a long term is a mortgage by demise where the right of redemption has been foreclosed or has been barred by possession and lapse of time. The fact that the land is not freehold is often overlooked, complication of title arises, and the intentions of a testator are sometimes frustrated, the leasehold interest passing under a gift not intended to include it.

Who has power to convert.

The power to convert into a fee is given to "any person beneficially entitled" "to possession" (see definition of "possession," s. 2 (iii.), *ante*). Thus a tenant for life, legal or equitable, and whether the land is "subject to any incumbrance or not," can effect the conversion. A trustee can only convert where the trust is active and he is in receipt of rent. Otherwise the beneficial owner is the person to convert. Thus a trustee under the usual trust for sale and conversion in a will

Trustee.

S. 65 (4), (5). LONG TERMS.

would be the proper person to effect a conversion, but not the trustee under a settlement holding the term on trusts corresponding to the limitation of the freeholds. There the equitable tenant for life would be the proper person.

Mortgagor but not mortgagee.

A mortgagee cannot convert, as it would be improper to allow him to change the nature of his mortgagor's estate. But the mortgagor can convert, the conversion being no injury to the mortgagee.

Effect of conversion.

(*b*) The effect of subs. 3 is to defeat the reversion in fee in the same way as on a disentail, so that the fee acquired by conversion is free from all dealings affecting the original fee.

It has been suggested (see Clerke and Brett's Conv. A. p. 162), that A. having a lease for 999 years at a rent might demise to B. for 500 years without rent, taking a fine, and then B. could acquire the fee. Still the rights of A., such as they might be, would be preserved under subs. 4. But the section seems to apply only to a term immediately under the fee, the expression "other person entitled" meaning "other person entitled in remainder or reversion after the freeholder."

(4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and, at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be and shall be conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

Where no dealing tenure is changed;

Under subs. 5, where there has been no dealing for value with the ultimate beneficial interest in the term, and that interest has not

S. 65 (5), (6), (7).

LONG TERMS.

become absolutely and indefeasibly vested (as where the term has been settled in the usual way, and no tenant in tail by purchase has attained twenty-one), the land on the enlargement of the term is for all purposes of descent, devise, &c., changed from leasehold to fee simple. It will no longer vest absolutely in the first tenant in tail who attains twenty-one, but will descend under the entail if not disentailed. This result is the same as that produced where leaseholds are sold under a power of sale and the proceeds invested in fee simple land.

contra where a conveyance for value.

Where there has been a conveyance for value the effect of that conveyance is preserved. Thus suppose the settlement to be on A. for life, remainder to his sons successively in tail, remainder to C. in tail, remainder to D. in fee, A. has no son of age, the term has not become absolutely and indefeasibly vested in any person, therefore the estate in fee simple acquired by enlargement should be conveyed to the uses of the settlement, and in the meantime will devolve accordingly as to the equitable interest. But C. will become absolutely entitled to the term in case A. dies without having a son who attains the age of twenty-one or dies under that age without leaving issue inheritable, and if C. has mortgaged this contingent interest then the mortgagee will take the fee obtained by enlargement in the same event in which he would have taken the term, but the equity of redemption will devolve under the entail. If a son of A. attains twenty-one before the enlargement is effected, then he becomes absolutely and indefeasibly entitled to the term, and this subs. 5 does not apply, but under subs. 4 the fee acquired is subject to the same trusts as the term, that is, a trust for the son absolutely, and no disentail is required. Under a will the land will pass as freehold or leasehold, according to its tenure at the time of the testator's death.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an inclosure Act or award.

(7.) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

Saves the right to mines not vested in surface owner.

Subs. 6 in effect gives to the owner of a fee obtained by enlargement the right to the mines in fee as well as the land, except in those cases where there is a possibility that the mines can be shewn to be vested in some other person than the reversioner in fee.

Mines severed in right (as by conveyance separately from the land) will also be severed in fact, but the words "in fact" seem also required to save the title of a person in possession of mines without obliging him to shew that they have been severed in right.

See Precedents, *post*, applicable to this section.

S. 66.

ADOPTION OF ACT.

XIV.—ADOPTION OF ACT.

Protection of solicitor and trustees adopting Act.

66.—(1.) It is hereby declared that the powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connexion with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.

(2.) But nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3.) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4.) Where such persons are acting without a solicitor, they shall also be protected in like manner.

Solicitor's responsibility in reference to adoption of the Act.

Under this s. a solicitor adopting the Act and framing his drafts so as to incorporate the forms contained in the Act, or so as not to exclude any provisions of the Act, incurs no responsibility, those forms and provisions being by this section declared proper. The same holds as to a trustee or executor. If he uses other forms his responsibility remains the same as before the Act.

Adoption by trustees.

Having regard to subs. 3, trustees and executors will probably always require the Act to be adopted, thereby obtaining express statutory protection.

XV.—MISCELLANEOUS.

Regulations respecting notice.

67.—(1.) Any notice required or authorized by this Act to be served shall be in writing.

(2.) Any notice required or authorized by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation without his name, or generally to the persons interested without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3.) Any notice required or authorized by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorized to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorized by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5.) This section does not apply to notices served in proceedings in the Court.

Service on mortgagor.

As to service on mortgagor of notice to sell by mortgagee, see note to s. 20, *ante*.

Short title of 5 & 6 Will. 4, c. 62.

68. The Act described in Part II. of the First Schedule to this Act shall, by virtue of this Act, have the short title of the Statutory Declarations Act, 1835, and may be cited by that short title in any declaration

SS. 68, 69 (1), (2), (3), (4), (5), (6), (7), (8), (9).

made for any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.

MISCELLANEOUS.

The object of this s. is to render unnecessary the long and cumbrous title of the Act referred to. The Form given in the schedule to that Act will now run thus: I, A. B., do solemnly . . . . and by virtue of the Statutory Declarations Act, 1835, &c.

COURT; PROCEDURE; ORDERS.

XVI.—COURT; PROCEDURE; ORDERS.

Regulations respecting payments into Court and applications.

69.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

(3.) Every application to the Court shall, except where it is otherwise expressed, be by summons at Chambers.

(4.) On an application by a purchaser notice shall be served in the first instance on the vendor.

(5.) On an application by a vendor notice shall be served in the first instance on the purchaser.

(6.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(7.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application.

(8.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, and may be made accordingly.

39 & 40 Vict. c. 59, s. 17.

(9.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(10.) General Rules, and Rules of the Court of Chancery of the County Palatine, under this Act may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

S. 69, (10); S. 70, (1), (2), (3).

COURT; PROCEDURE; ORDERS.

70.—(1.) An order of the Court under any statutory or other jurisdiction shall not as against a purchaser be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not.

Orders of Court conclusive.

(2.) This section shall have effect with respect to any lease, sale, or other act under the authority of the Court, and purporting to be in pursuance of the Settled Estates Act, 1877, notwithstanding the exception in section forty of that Act, or to be in pursuance of any former Act repealed by that Act, notwithstanding any exception in such former Act.

40 & 41 Vict. c. 18, s. 40.

(3.) This section applies to all orders made before or after the commencement of this Act, except any order which has before the commencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this Act pending for having it set aside or determined to be invalid.

What matters covered by this section.

This sect. has an important effect in making valid titles under sales by the Court. The order for sale is made conclusive as to jurisdiction (for instance to sell part of a settled estate for any purpose) and as to consent (as of a respondent in a petition under the Settled Estates Act), notice, or service (as where a party to an action or a person served with notice of judgment in an action does not appear). It seems clear that the purchaser must still ascertain that all persons in existence who ought to be parties to the action or other proceeding *appear* to be parties or to be otherwise bound. If any person in existence be not a party or not so bound, it is not a question of jurisdiction, concurrence, consent, notice, or service, but simply that his interest is not affected by the action or other proceeding. To go further would require the establishment of a jurisdiction and proceedings similar to those of the Landed Estates Court in Ireland.

How far retrospective.

Subs. 2 gives this section an important retrospective effect by making valid every past lease or sale under the Settled Estates Acts of 1856 and 1877, where no proceedings have been taken to question the

S. 70 (3); SS. 71, 72 (1), (2), (3).

sale, notwithstanding that there has been in fact an omission to obtain the required consent under s. 28 of the first Act, or s. 40 of the second Act.

COURT; PROCEDURE; ORDERS.

XVII.—REPEALS.

REPEALS.

Repeal of enactments in Part III. of Second Schedule; restriction on all repeals.

71.—(1.) The enactments described in Part III. of the Second Schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act; but this provision shall not be construed as qualifying the provision of this Act relating to section forty of the Settled Estates Act, 1877, or any former Act repealed by that Act.

Powers under Lord Cranworth's Act preserved.

Subs. 2 preserves to the full extent the power of sale given by Lord Cranworth's Act in case of mortgages prior to 1882. The "operation and effect" of that Act was to give every mortgagee a power of sale unless otherwise agreed, and as a "consequence" he could sell. This "operation, effect, and consequence" are not to be affected by the repeal of the Act: See similar but more extensive reservation of powers of the Public Works Loan Commissioners under their repealed Acts by 38 & 39 Vict. c. 89, s. 57 (Public Works Loans Act, 1875).

IRELAND.

XVIII.—IRELAND.

Modifications respecting Ireland.

72.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act may direct that any of those matters be assigned to the Land Judges of that Division.

(4.) The proper office of the Supreme Court of Judicature in Ireland shall be substituted for the central office of the Supreme Court of Judicature. S. 72 (4), (5); S. 73.

IRELAND.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act. 40 & 41 Vict. c. 57, s. 69.

73.—(1.) Section five of the Vendor and Purchaser Act, 1874, is hereby repealed from and after the commencement of this Act, as regards cases of death thereafter happening; and section seven of the Vendor and Purchaser Act, 1874, is hereby repealed as from the date at which it came into operation. Death of bare trustee (*a*) intestate &c. 37 & 38 Vict. c. 78.

(2.) This section extends to Ireland only.

(*a*) As to the meaning of a "bare trustee," see p. 137 (*a*), *post*.

SCHEDULES.

THE FIRST SCHEDULE.

ACTS AFFECTED (*a*).

PART I.

1 & 2 Vict. c. 110.—An Act for abolishing arrest on mesne process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.

2 & 3 Vict. c. 11.—An Act for the better protection of purchasers against judgments, crown debts, lis pendens, and fiats in bankruptcy.

18 & 19 Vict. c. 15.—An Act for the better protection of purchasers against judgments, crown debts, cases of lis pendens, and life annuities or rentcharges.

22 & 23 Vict. c. 35.—An Act to further amend the law of property and to relieve trustees.

23 & 24 Vict. c. 38.—An Act to further amend the law of property.

23 & 24 Vict. c. 115.—An Act to simplify and amend the practice as to the entry of satisfaction on Crown debts and on judgments.

27 & 28 Vict. c. 112.—An Act to amend the law relating to future judgments, statutes, and recognizances.

28 & 29 Vict. c. 104.—The Crown Suits, &c. Act, 1865.

31 & 32 Vict. c. 54.—The Judgments Extension Act, 1868.

PART II.

5 & 6 Will. 4, c. 62.—An Act to repeal an Act of the present session of Parliament, intituled "An Act for the more effectual abolition of oaths and affirmations taken and

(*a*) Some of these Acts were affected only by sections of the Bill struck out in the House of Commons, and the reference to them here should also have been struck out. (*See* Preface to the first edition.)

made in various Departments of the State, and to substitute declarations in lieu thereof; and for the more entire suppression of voluntary and extra-judicial oaths and affidavits;" and to make other provisions for the abolition of unnecessary oaths.

THE SECOND SCHEDULE.

REPEALS.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end, of the portion comprised in the description or citation.

PART I.

22 & 23 Vict. c. 35, in part.	An Act to further amend the law of property and to relieve trustees . . . . . Sections four to nine.	in part; namely,—
23 & 24 Vict. c. 126, in part.	The Common Law Procedure Act, 1860 . . . . . Section two.	in part; namely,—

PART II.

15 & 16 Vict. c. 86, in part.	An Act to amend the practice and course of proceeding in the High Court of Chancery . Section forty-eight.	in part; namely,—

PART III.

8 & 9 Vict. c. 119.	An Act to facilitate the conveyance of real property.	
23 & 24 Vict. c. 145, in part.	An Act to give to trustees, mortgagees, and others certain powers now commonly inserted in settlements, mortgages, and wills . . . . Parts II. and III. (sections eleven to thirty) (*a*).	in part; namely,—

(*a*) Part I. of this Act would have been superseded by the Settled Land Bill; but is still left in force that Bill not having passed.

THE THIRD SCHEDULE.

STATUTORY MORTGAGE.

PART I.

Deed of Statutory Mortgage.

THIS INDENTURE made by way of statutory mortgage the day of 1882 between *A.* of [*&c.*] of the one part and *M.* of [*&c.*] of the other part WITNESSETH that in consideration of the sum of £ now paid to *A.* by *M.* of which sum *A.* hereby acknowledges the receipt *A.* as mortgagor and as beneficial owner hereby conveys to *M.* All that [*&c.*] To hold to and to the use of *M.* in fee simple for securing payment on the day of 1883 of the principal sum of £ as the mortgage money with interest thereon at the rate of [*four*] per centum per annum.

In witness &c.

*** *Variations in this and subsequent forms to be made, if required, for leasehold land, or other matter.*

PART II.

(A.)

Deed of Statutory Transfer, Mortgagor not joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between *M.* of [*&c.*] of the one part and *T.* of [*&c.*] of the other part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [*&c.*] WITNESSETH that in consideration of the sum of £ now paid to *M.* by *T.* being the aggregate amount of £ mortgage money and £ interest due in respect of the said mortgage of which sum *M.* hereby acknowledges the receipt *M.* as mortgagee hereby conveys and transfers to *T.* the benefit of the said mortgage.

In witness &c.

(B.)

Deed of Statutory Transfer, a Covenantor joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between *A.* of [*&c.*] of the first part *B.* of [*&c.*] of the second part and *C.* of [*&c.*] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [*&c.*] WITNESSETH that in consideration of the sum of £ now paid to *A.* by *C.* being the mortgage money due in respect of the said mortgage no interest being now due and payable thereon of which sum *A.* hereby acknowledges the receipt *A.* as mortgagee with the concurrence of *B.* who joins herein as covenantor hereby conveys and transfers to *C.* the benefit of the said mortgage.

In witness &c.

(C.)

Statutory Transfer and Statutory Mortgage combined.

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 1883 between *A.* of [*&c.*] of the 1st part *B.* of [*&c.*] of the 2nd part and *C.* of [*&c.*] of the 3rd part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [*&c.*] WHEREAS the principal sum of £ only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon AND WHEREAS *B.* is seised in fee simple of the land comprised in the said mortgage subject to that mortgage NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ now paid to *A.* by *C.* of which sum *A.* hereby acknowledges the receipt and *B.* hereby acknowledges the payment and receipt as aforesaid* *A.* as mortgagee hereby conveys and transfers to *C.* the benefit of the said mortgage AND THIS INDENTURE ALSO WITNESSETH that for the same consideration *A.* as mortgagee and according to his estate and by direction of *B.* hereby conveys and *B.* as beneficial owner hereby conveys and confirms to *C.* All that [*&c.*] To hold to and to the use of *C.* in fee simple for securing payment on the day of 1882 of† the

sum of £ as the mortgage money with interest thereon at the rate of [*four*] per centum per annum.

In witness &c.

[*Or, in case of further advance, after* aforesaid *at* * *insert* and also in consideration of the further sum of £ now paid by *C.* to *B.* of which sum *B.* hereby acknowledges the receipt, *and after* of *at* † *insert* the sums of £ and £ making together]

*** *Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.*

Part III.

Deed of Statutory Re-conveyance of Mortgage.

This Indenture made by way of statutory re-conveyance of mortgage the day of 1884 between *C.* of [*&c.*] of the one part and *B.* of [*&c.*] of the other part supplemental to an indenture made by way of statutory transfer of mortgage dated the day of 1883 and made between [*&c.*] Witnesseth that in consideration of all principal money and interest due under that indenture having been paid of which principal and interest *C.* hereby acknowledges the receipt *C.* as mortgagee hereby conveys to *B.* all the lands and hereditaments now vested in *C.* under the said indenture To hold to and to the use of *B.* in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness &c.

*** *Variations as noted above.*

THE FOURTH SCHEDULE.

SHORT FORMS OF DEEDS.

I.—*Mortgage.*

This Indenture of Mortgage made the day of 1882 between *A.* of [*&c.*] of the one part and *B.* of [*&c.*] and *C.* of [*&c.*] of the other part Witnesseth that in consideration of the sum of £ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account of which sum

A. hereby acknowledges the receipt *A.* hereby covenants with *B.* and *C.* to pay to them on the day of 1882 the sum of £ with interest thereon in the meantime at the rate of [*four*] per centum per annum and also as long after that day as any principal money remains due under this mortgage to pay to *B.* and *C.* interest thereon at the same rate by equal half-yearly payments on the day of and the day of AND THIS INDENTURE ALSO WITNESSETH that for the same consideration *A.* as beneficial owner hereby conveys to *B.* and *C.* All that [*&c.*] To hold to and to the use of *B.* and *C.* in fee simple subject to the proviso for redemption following (namely) that if *A.* or any person claiming under him shall on the day of 1882 pay to *B.* and *C.* the sum of £ and interest thereon at the rate aforesaid then *B.* and *C.* or the persons claiming under them will at the request and cost of *A.* or the persons claiming under him re-convey the premises to *A.* or the persons claiming under him AND *A.* hereby covenants with *B.* as follows [*here add covenant as to fire insurance or other special covenant required*].

In witness, &c.

II.—*Further Charge.*

THIS INDENTURE made the day of 18 between [*the same parties as the foregoing mortgage*] and supplemental to an indenture of mortgage dated the day of 18 and made between the same parties for securing the sum of £ and interest at [*four*] per centum per annum on property at [*&c.*] WITNESSETH that in consideration of the further sum of £ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account [*add receipt and covenant as in the foregoing mortgage*] and further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to *B.* and *C.* of the sum of £ and the interest thereon hereinbefore covenanted to be paid as well as the sum of £ and interest secured by the same indenture.

In witness, &c.

III.—*Conveyance on Sale.*

THIS INDENTURE made the day of 1883 between *A.* of [*&c.*] of the 1st part *B.* of [*&c.*] and *C.* of [*&c.*] of the

2nd part and *M.* of [*&c.*] of the 3rd part WHEREAS by an indenture dated [*&c.*] and made between [*&c.*] the lands hereinafter mentioned were conveyed by *A.* to *B.* and *C.* in fee simple by way of mortgage for securing £ and interest and by a supplemental indenture dated [*&c.*] and made between the same parties those lands were charged by *A.* with the payment to *B.* and *C.* of the further sum of £ and interest thereon AND WHEREAS a principal sum of £ remains due under the two before-mentioned indentures but all interest thereon has been paid as *B.* and *C.* hereby acknowledge NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ paid by the direction of *A.* to *B.* and *C.* and of the sum of £ paid to *A.* those two sums making together the total sum of £ paid by *M.* for the purchase of the fee simple of the lands hereinafter mentioned of which sum of £ *B.* and *C.* hereby acknowledge the receipt and of which total sum of £ *A.* hereby acknowledges the payment and receipt in manner before-mentioned *B.* and *C.* as mortgagees and by the direction of *A.* as beneficial owner hereby convey and *A.* as beneficial owner hereby conveys and confirms to *M.* All that [*&c.*] To hold to and to the use of *M.* in fee simple discharged from all money secured by and from all claims under the before-mentioned indentures [*Add, if required,* And *A.* hereby acknowledges the right of *M.* to production of the documents of title mentioned in the Schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof].

In witness, &c.

[The Schedule above referred to.

To contain list of documents retained by A.]

IV.—*Marriage Settlement.*

THIS INDENTURE made the day of 1882 between *John M.* of [*&c.*] of the 1st part *Jane S.* of [*&c.*] of the 2nd part and *X.* of [*&c.*] and *Y.* of [*&c.*] of the 3rd part WITNESSETH that in consideration of the intended marriage between *John M.* and *Jane S. John M.* as settlor hereby conveys to *X.* and *Y.* All that [*&c.*] To hold to *X.* and *Y.* in fee simple to the use of *John M.* in fee simple until the marriage and after the marriage to the use of *John M.* during his life without impeachment of waste with remainder after his death to the

use that *Jane S.* if she survives him may receive during the rest of her life a yearly jointure rentcharge of £ to commence from his death and to be paid by equal half-yearly payments the first thereof to be made at the end of six calendar months from his death if she is then living or if not a proportional part to be paid at her death and subject to the before-mentioned rentcharge to the use of *X.* and *Y.* for a term of five hundred years without impeachment of waste on the trusts hereinafter declared and subject thereto to the use of the first and other sons of *John M.* and *Jane S.* successively according to seniority in tail male with remainder [*insert here, if thought desirable,* to the use of the same first and other sons successively according to seniority in tail with remainder] to the use of all the daughters of *John M.* and *Jane S.* in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of *John M.* in fee simple [*Insert trusts of term of* 500 *years for raising portions; also, if required, power to charge jointure and portions on a future marriage; also powers of sale, exchange, and partition, and other powers and provisions, if and as desired.*]

In witness, &c.

CHAPTER IV.

SOLICITORS' REMUNERATION ACT, 1881.

44 & 45 VICT. c. 44.

S. 1 (1), (2), (3).

An Act for making better provision respecting the Remuneration of Solicitors in Conveyancing and other non-contentious Business. [22nd August, 1881.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Preliminary.

Short title; extent; interpretation.

1.—(1.) This Act may be cited as the Solicitors Remuneration Act, 1881.

(2.) This Act does not extend to Scotland.

(3.) In this Act—

"Solicitor" means a solicitor or proctor qualified according to the statutes in that behalf:

"Client" includes any person who, as a principal, or on behalf of another, or as trustee or executor, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ, a solicitor, and any person for the time being liable to pay to a solicitor, for his services, any costs, remuneration, charges, expenses, or disbursements:

"Person" includes a body of persons corporate or unincorporate:

"Incorporated Law Society" means, in England, the society referred to under that title in the Act

passed in the session of the twenty-third and twenty-fourth years of Her Majesty's reign, intituled "An Act to amend the Laws relating to Attorneys, Solicitors, Proctors, and Certificated Conveyancers"; and, in Ireland, the society referred to under that title in the Attorneys and Solicitors Act, Ireland, 1866:

S. 1 (3); S. 2.

Preliminary.

29 & 30 Vict. c. 84.

"Provincial law societies or associations" means all bodies of solicitors in England incorporated by Royal Charter, or under the Joint Stock Companies Act, other than the Incorporated Law Society above mentioned.

General Orders.

General Orders.

Power to make General Orders for remuneration in conveyancing, &c.

2. In England, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and the president for the time being of the Incorporated Law Society, and the president of one of the provincial law societies or associations, to be selected and nominated from time to time by the Lord Chancellor to serve during the tenure of office of such president, or any three of them, the Lord Chancellor being one, and, in Ireland, the Lord Chancellor, the Lord Chief Justice of Ireland, the Master of the Rolls, and the president for the time being of the Incorporated Law Society, or any three of them, the Lord Chancellor being one, may from time to time make any such General Order as to them seems fit for prescribing and regulating the remuneration of solicitors in respect of business connected with sales, purchases, leases, mortgages, settlements, and other matters of conveyancing, and in respect of other business not being business in any action, or transacted in any Court, or in the Chambers of any Judge or Master, and not being otherwise contentious business, and may revoke or alter any such Order.

The power to make orders does not extend to common form business in the Probate Division, that business being excluded by the words "transacted in any Court."

SS. 3, 4.

General Orders

Communication to Incorporated Law Society.

3. One month at least before any such General Order shall be made, the Lord Chancellor shall cause a copy of the regulations and provisions proposed to be embodied therein to be communicated in writing to the Council of the Incorporated Law Society, who shall be at liberty to submit such observations and suggestions in writing as they may think fit to offer thereon; and the Lord Chancellor, and the other persons hereby authorised to make such Order, shall take into consideration any such observations or suggestions which may be submitted to them by the said Council within one month from the day on which such communication to the said Council shall have been made as aforesaid, and, after duly considering the same, may make such Order, either in the form or to the effect originally communicated to the said Council, or with such alterations, additions, or amendments, as to them may seem fit.

Principles of remuneration.

4. Any General Order under this Act may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or per-centage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, or others, and may, as regards the amount of the remuneration, regulate the same with reference to all or any of the following, among other, considerations; (namely,)

The position of the party for whom the solicitor is concerned in any business, that is, whether as vendor or as purchaser, lessor or lessee, mortgagor or mortgagee, and the like:

The place, district, and circumstances at or in which the business or part thereof is transacted:

The amount of the capital money or of the rent to which the business relates:

The skill, labour, and responsibility involved therein on the part of the solicitor:

The number and importance of the documents prepared or perused, without regard to length:

The average or ordinary remuneration obtained by solicitors in like business at the passing of this Act. SS. 5, 6, 7, 8 (1).

General Orders.

Security for costs, and interest on disbursements.

5. Any General Order under this Act may authorise and regulate the taking by a solicitor from his client of security for future remuneration in accordance with any such Order, to be ascertained by taxation or otherwise, and the allowance of interest.

Error in marginal note to s. 5.

In the Bill as it left the H. of L., the word "interest" was followed by the words "on money disbursed by a solicitor for his client." The words in the marginal note "on disbursements" ought to have been omitted, and must be disregarded.

Order to be laid before Houses of Parliament; disallowance on address.

6.—(1.) Any General Order under this Act shall not take effect unless and until it has been laid before each House of Parliament, and one month thereafter has elapsed.

(2.) If within that month an address is presented to the Queen by either House, seeking the disallowance of the Order, or part thereof, it shall be lawful for Her Majesty, by Order in Council, to disallow the Order, or that part, and the Order or part disallowed shall not take effect.

Effect of Order as to taxation.

7. As long as any General Order under this Act is in operation, the taxation of bills of costs of solicitors shall be regulated thereby.

Agreements.

Agreements.

Power for solicitor and client to agree on form and amount of remuneration.

8.—(1.) With respect to any business to which the foregoing provisions of this Act relate, whether any General Order under this Act is in operation or not, it shall be competent for a solicitor to make an agreement with his client, and for a client to make an agreement with his solicitor, before or after or in the course of the transaction of any such business, for the remuneration of the solicitor, to such amount and in such manner as the solicitor and the client think fit, either by a gross sum, or by commission or per-centage, or by salary, or otherwise; and it shall be competent for the solicitor to accept from the client, and for the client to give to the solicitor, remuneration accordingly.

S. 8 (2), (3), (4); S. 9.

Agreements.

(2.) The agreement shall be in writing, signed by the person to be bound thereby or by his agent in that behalf.

(3.) The agreement may, if the solicitor and the client think fit, be made on the terms that the amount of the remuneration therein stipulated for either shall include or shall not include all or any disbursements made by the solicitor in respect of searches, plans, travelling, stamps, fees, or other matters.

(4.) The agreement may be sued and recovered on or impeached and set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor; and if, under any order for taxation of costs, such agreement being relied upon by the solicitor shall be objected to by the client as unfair or unreasonable, the taxing master or officer of the Court may inquire into the facts, and certify the same to the Court; and if, upon such certificate, it shall appear to the Court or judge that just cause has been shown either for cancelling the agreement, or for reducing the amount payable under the same, the Court or judge shall have power to order such cancellation or reduction, and to give all such directions necessary or proper for the purpose of carrying such order into effect, or otherwise consequential thereon, as to the Court or judge may seem fit.

It would seem that an agreement under this section may (notwithstanding s. 9) include an agreement as to security for future costs. Such agreement is good under this Act, although no General Order is in operation. The two parts of the Act are distinct. This section of the Bill takes its present form in consequence of amendments in the H. of L.

Restriction on Solicitors' Act, 1870. 33 & 34 Vict. c. 28.

9. The Attorneys and Solicitors' Act, 1870, shall not apply to any business to which this Act relates.

PART II.

FORMS.

CHAPTER I.

CONTRACTS FOR SALE.

In framing contracts and conditions of sale under the V. & P. A. and C. A. the following rules may afford assistance.

1. Where a title for forty years and upwards before the date of the contract is intended to be furnished, the date of commencement need not be specified, except in the following cases:— Length of title.

(*a.*) Advowsons or reversionary interests (Dart, 293, 294, 5th ed.).

(*b.*) Tithes or other property derived from the Crown where evidence of the Crown grant is to be negatived.

(*c.*) Where the document first abstracted is a will and evidence of seisin is to be precluded: *Parr* v. *Lovegrove*, 4 Drew. 170.

(*d.*) Where the document first abstracted is a conveyance under a power, or trust for sale, or the bar of an entail, or other document of a similar kind.

In all these cases the fixing of a date for commencement precludes inquiry to prior title: C. A. s. 3 (3). If the date be not fixed, the date of a recited deed may be the time prescribed by V. & P. A., s. 1 (see the last clause of that s.), and an abstract of the deed may be required. The safest course is always to fix the date of commencement.

2. The title of leaseholds for years commences with the lease (V. & P. A., s. 2) or the underlease (C. A. s. 3 (1)). Leaseholds.

3. Unless the contrary be shewn, the last receipt for rent proves the validity of the lease and due performance of covenants therein, and in the case of an underlease also the validity of every superior lease and due performance of the covenants therein: C. A. s. 3 (4), (5), but where the rent is nominal so that there can be no receipt, special provision must be made.

4. The title to the freehold of enfranchised copyholds or customary freeholds commences with the deed of enfranchisement: C. A. s. 3 (2). Enfranchised copyholds.

5. The commencement of title being fixed, requisitions on the prior title are precluded: C. A. s. 3 (3).

6. As a general rule, all evidence in support of title and all docu- Evidence.

ments not in the vendor's possession, and copies of records, must be obtained and produced at the expense of the purchaser: C. A. s. 3 (6); or production must be precluded by condition.

7. The commencement of title being fixed, all subsequent documents not of record must be produced or production must be precluded by condition.

Recitals. 8. As to land, recitals of facts in documents twenty years old are evidence: V. & P. A. s. 2 (2).

One abstract for several lots. 9. Only one abstract of the same title need be furnished to a purchaser of several lots: C. A. s. 3 (7).

Documents not delivered to purchaser. 10. Copies of documents not handed over must, if required by a purchaser, be paid for by him: C. A. s. 3 (6).

11. An equitable right to production of documents is sufficient without a covenant for production: V. & P. A. s. 2 (3).

12. The expense of a covenant for production, or of an acknowledgment or undertaking falls on the purchaser: V. & P. A. s. 2 (4).

13. Where a vendor does not sell the whole property, he may retain the deeds: V. & P. A. s. 2 (5).

Execution of conveyance. 14. The purchaser cannot require the conveyance to be executed in his presence or in that of his solicitor: C. A. s. 8, but he may still require that the money be paid to the vendor personally.

Payment of purchase-money. 15. The purchaser may pay his purchase-money to a solicitor producing the conveyance executed, with a receipt in or indorsed upon it: C. A. s. 56.

AGREEMENT FOR SALE BY PRIVATE CONTRACT.

Parties. AN AGREEMENT made the day of between A., of &c., hereinafter called the vendor, of the one part, and B., of &c., hereinafter called the purchaser, of the other part,

Agreement Whereby the vendor, so far as relates to the acts on his part to be performed, agrees with the purchaser, and the purchaser, so far as relates to the acts on his part to be performed, agrees with the vendor as follows, that is to say:—

to sell and purchase. 1. The vendor is to sell and the purchaser is to purchase at the price of £ the property hereinafter mentioned, and the fee simple and inheritance thereof in possession [*or in case of leasehold, say,* held under lease [underlease] dated the day of for the term of years from the day of [*in case of underlease, say,* less the last days thereof] at the

yearly rent of £ , and all the term and interest granted by that lease [underlease] subject to the lessee's [underlessees] covenants and the provisions therein contained and subject to the tenancies but free from incumbrances, that is to say: Price.

ALL that &c., which premises are more particularly described in the schedule hereto, and are intended to be delineated on the plan hereto annexed, and to be thereon coloured (a). Parcels.

2. The purchaser is to pay his purchase-money on the day of next at the office of , at which time and place the purchase is to be completed, and the purchaser paying his purchase-money [and the amount of valuation as hereinafter provided] is as from that day to be let into possession or into receipt of rents and profits, and up to that day all rent, rates, taxes, and outgoings are (if necessary) to be apportioned, and if from any cause whatever other than wilful default on the part of the vendor the completion of the purchase is delayed beyond the before-mentioned day, the purchase-money is to bear interest at the rate of 5 per cent. per annum from that day to the day of actual payment thereof. Time for completion. Possession. Interest in case of delay.

(a) Where several leases or underleases are sold together, instead of the first paragraph, say

1. The vendor is to sell and the purchaser is to purchase at the price of £ All those pieces of land with the messuages thereon shortly described in the first column of the schedule hereto, free from incumbrances, for the residues of the respective terms mentioned in the second column of the same schedule granted by the several leases [underleases] the dates whereof are mentioned in the third column of the same schedule, at the several rents mentioned in the fourth column of the same schedule, subject to the lessee's [underlessee's] covenants, and the provisions contained in the said leases [underleases] and subject also to the tenancies affecting the premises.

Time for delivery of requisitions,

3. The purchaser is within days after delivery (*a*) of his abstract to send to Messrs. of , the solicitors of the vendor, a statement in writing of all the objections to and requisitions as to the title or evidence of title, or the abstract, and subject thereto the title is to be deemed accepted, and all objections and requisitions not included in any statement sent within the time aforesaid are to be deemed waived, and any answer to any objection or requisition is to be replied to in writing within ten days after the delivery thereof, and if not so replied to is to be considered satisfactory, and time is to be deemed in all respects as of the essence of this clause, and if the purchaser should take any objection or make any requisition which the vendor is unable or unwilling to remove or comply with, and should not withdraw the same after being required so to do, the vendor may by notice in writing delivered to the purchaser or his solicitor, and notwithstanding any intermediate negotiation, rescind this agreement, and the purchaser is to return forthwith all abstracts and papers in his possession belonging to the vendor, and not to make any claim on the vendor for costs or otherwise (*b*).

and replies to answers.

If any objection cannot be answered.

Power to rescind.

[*Here add condition as to commencement of title, special condition, No.* 5, *and any other special conditions, see post. In case of leaseholds add, if required, special conditions Nos.* 26, 27, 29, 30, *post, and continue :*]

Contents of lease[s] or underlease[s].

A copy [*or* copies] of the said lease [underlease] [*or* the leases [underleases] referred to in the schedule] has [have] been perused by the purchaser, and he shall be deemed to purchase with notice of all the contents thereof.

[*Also add clause as to preparation and delivery of conveyance,* 5*th ordinary condition, post. Also, if required, clause*

(*a*) No time should be stated for delivery of the abstract for the reasons given in the note to the 4th ordinary condition, *post.*

(*b*) In sales by private contract there is generally no deposit, the purchaser being known, though sometimes a deposit may be required. If there is a deposit, the latter part of this clause should be as in the latter part of the 4th ordinary condition, *post.*

for taking timber and fixtures at a valuation, 2nd special condition, post. Also clause as to compensation or excluding compensation, special condition, No. 43 or 44, *post.*]

Power to re-sell on default.

Lastly. If the purchaser should neglect or fail to perform this agreement on his part (*a*), the vendor may with or without notice resell the premises without previously tendering a conveyance to the purchaser, and any resale may be made by auction or private contract at such time, subject to such conditions, and in such manner generally as the vendor thinks proper; and if thereby the vendor should incur a loss by reason of diminution in price or expenses incurred, or both, the purchaser is to pay to the vendor the amount of such loss as liquidated damages; and on any resale by auction the premises may be bought in, and all expenses consequent on an unsuccessful attempt to resell are to be forthwith paid to the vendor by the purchaser.

In witness, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*a*) If there is a deposit, say here—

"his deposit money is to be forfeited to the vendor, who may," &c.

CHAPTER II.

CONDITIONS OF SALE.

SECT. I.

Ordinary Conditions of Sale by Auction (*a*).

Highest bidder.

Reserve price.

1. The highest bidder is to be the purchaser, the vendor[s] fixing a reserve price and reserving the right to bid up to such reserve price [for each lot] by himself [themselves] or his [their] agent (*b*) [and also the right to consolidate two or more lots into one].

Advance on bidding and retracting.

2. No person is to advance less than £ [the sum to be fixed by the auctioneer] on each bidding, or retract a bidding; and if any dispute arise the property [lot in dispute] is to be put up again at the last undisputed bidding, or the auctioneer may determine the dispute.

Deposit.

3. The [Each] purchaser is at the close of the sale to him to pay down a deposit of per cent. on the amount of his purchase-money, and to sign an agreement in the form subjoined to these conditions for the completion of his purchase according to these conditions, and to

Time for completion.

(*a*) It is convenient to have some rule as to the order of conditions of sale, and the following is suggested as agreeing with the order in which the transactions take place:—

(1) As to the auction.
(2) Delivery of abstract and requisitions.
(3) Matters arising on the abstract.
(4) Matters arising on the particulars (identity, &c.).
(5) The conveyance and its contents.
(6) Compensation.
(7) Resale on default.

As to conditions supplied by the V. & P. A. and C. A., see pp. 125, 126, *ante*.

(*b*) As to bidding and reserve price, see 30 & 31 Vict. c. 48.

pay the remainder of his purchase-money [and the amount of valution as hereinafter provided] on the day of at the office, No. Street, in of Messrs. the solicitors of the vendor[s], at which time and place the purchase[s] is [are] to be completed; and the [a] purchaser paying his purchase-money is as from that day to be let into possession or receipt of rents and profits, and up to that day all rent, rates, taxes, and outgoings are (if necessary) to be apportioned; and if from any cause whatever, other than wilful default on the part of the vendor[s], the completion of the [any] purchase is delayed beyond the before-mentioned day, the remainder of the purchase-money [and the amount of valuation] is to bear interest at the rate of 5 per cent. per annum from that day to the day of actual payment thereof.

Possession.

Interest in case of delay.

4. The [Each] purchaser is within days after the delivery of his abstract (*a*) to send to Messrs. of , the solicitors of the vendor[s], a statement in writing of all the objections to and requisitions as to the title or evidence of title, or the abstract, and subject thereto the title is to be deemed accepted, and all objections and requisitions not included in any statement sent within the time aforesaid are to be deemed waived, and an answer to any objection or requisition is to be replied to in writing within ten days after the delivery thereof, and if not so replied to is to be considered satisfactory, and time is to be deemed in all respects as of the essence of this condition. If the [any] purchaser should take any objection or make any requisition which the vendor is unable or unwilling to remove or comply with, and should not withdraw the same after being required so to do, the vendor may by notice in writing delivered to the [such] purchaser or his solicitors, and notwithstanding any intermediate negociation, rescind the contract for sale, and

Time for delivery of requisitions,

and replies to answers.

If requisition cannot be answered,

power to rescind.

(*a*) There should be no time specified for delivery by the vendor of his abstract, lest he should fail in delivering it within the specified time, or should deliver an imperfect abstract (see Dart, V & P. 125, 304, 5th ed.), but in sales under the Court the Act requires a time to be stated, see 15 & 16 Vict. c. 86, s. 56.

Time for delivery of abstract not to be stated.

the vendor[s] is [are] within one week after such notice to repay to the purchaser [whose contract is rescinded] his deposit money, which is to be accepted by him in satisfaction of all claims on any account whatever, and the purchaser is to return forthwith all abstracts and papers in his possession belonging to the vendor[s].

[*Here add clause as to commencement of title, special condition, No.* 5, *post, and, if required, clause as to taking timber and fixtures at a valuation, 2nd special condition, post, and any other special conditions, see post.*]

Preparation of conveyance.

5. The conveyance to the [each] purchaser is to be prepared by him and at his own expense, and the engrossment thereof is to be delivered at the office of the

Delivery of draft.

solicitors of the vendor[s] before the day of next for execution by the vendor[s] and other necessary parties (if any), and the draft of such conveyance for perusal and approval on behalf of the vendor[s] and other necessary parties (if any) is to be left at the office of such solicitors at least seven days before delivery of the engrossment.

[*Here add clause as to compensation or excluding compensation, see special condition No.* 43 *or* 44, *post, as the case may be.*]

Power to resell on default.

Lastly—If the [any] purchaser should neglect or fail to comply with any of the above conditions, his deposit money is to be forfeited to the vendor[s], who may with or without notice resell the premises [the lot or lots in respect whereof default occurs] without previously tendering a conveyance to the defaulter at this sale, and any resale may be made by auction or private contract at such time, subject to such conditions and in such manner generally as the vendor[s] may think proper; and if thereby the vendor[s] should incur a loss by reason of diminution in price or expenses incurred, or both, the [defaulting] purchaser at this sale is to pay to the vendor[s] the amount of such loss as liquidated damages, and on any such resale by auction the premises [lot or lots offered for sale] may be bought in, and all expenses consequent on an unsuccessful attempt to resell are to be

forthwith paid to the vendor[s] by the defaulter at this sale.

Memorandum for signature.

Be it remembered that at the sale by auction this day of of the property mentioned in the annexed particulars of sale, of was the highest bidder for the premises [Lot], and was declared the purchaser thereof, subject to the above conditions, at the price of £ , and has paid the sum of £ by way of deposit, and agrees to pay to (*b*), the vendor[s] according to the above conditions the balance of the said purchase-money [and also the valuation money]; and the vendor[s] and purchaser hereby agree to complete the sale in accordance with the above conditions of sale.

Purchase-money, £ .
Deposit, £ .

Balance, £ .

Abstract of title to be sent to .

Vendor to be named or described.

(*b*) The vendor must be named or otherwise sufficiently described (see Dart, 218, 5th ed.; *Catling* v. *King*, 5 Ch. D. 660; *Rossiter* v. *Miller*, 3 App. C. 1124). "Vendor" is not a sufficient description: *Potter* v. *Duffield*, L. R. 18 Eq. 4.

SECT. II.

SPECIAL CONDITIONS OF SALE.

Power to withdraw, refuse bidding, and re-arrange lots.

1. The auctioneer may withdraw the property [any lot] from sale without declaring the reserve price, and may refuse any bidding and may combine any lots in one lot, or may offer the property for sale in other lots than those mentioned in the particulars.

Timber [and fixtures] at a valuation (*c*).

2. The [Each] purchaser is, in addition to his purchase-money, to pay for [the fixtures and for] all timber and timber-like trees, tellers, pollards, saplings, and plantations (if any) down to 1*s.* per stick inclusive, and underwood down to the stem, according to a valuation to be made in manner following—that is to say, each party (vendor and purchaser), or their respective solicitors, is within twenty-one days after the sale to appoint by writing one person as valuer, and to give notice in writing to the other party of the name and address of the person so appointed, and the two persons so appointed are to make the valuation, but are before they commence their duty to appoint an umpire by writing, and the decision of the two valuers if they agree, or of their umpire if they disagree, is to be final, and in case the purchaser should neglect or refuse to appoint a valuer and give notice thereof in manner and within the time before specified, the valuer appointed by the vendor is alone to make the valuation, and his valuation is to be final.

Where property sold with possession.

3. The vendor reserves the right to cut and sell all the growing crops, and the right to the use of the grazing, and the right to the garden fruits and crops up to the time when under these conditions the purchaser is to be let into possession [and also the right to dig up and remove the crops of at any time before the day of next].

As to trustees selling timber separately.

(*c*) Timber must not be sold separately by trustees unless expressly authorised (*Cholmeley* v. *Paxton*, 3 Bing. 207).

4. A purchaser whose purchase-money does not exceed £ is not, except upon the terms afterwards mentioned, to require delivery to him of an abstract of title, but may within ten days after the sale [*or in a sale under the Court* after the certificate of the result of the sale has become binding] attend at the office of Messrs. at , during the hours of ten to four in the day, to examine and take extracts from an abstract prepared in accordance with these conditions; nevertheless on giving notice in writing to Messrs. requesting an abstract, and also on paying to them the sum of £ within four days after the sale [*or* after the certificate of the result of the sale has become binding], he is to have delivered to him an abstract prepared in accordance with these conditions, and whether he so attend or not, he is to be bound by these conditions, and in case no abstract is required, he is to be so bound in the same way as if an abstract had been actually delivered to him on the tenth day after the sale [*or* after the certificate of the result of the sale has become binding], and is to be considered as having had such abstract actually delivered to him on that day. As to abstract of title to small lots.

Each purchaser to whom an abstract is delivered pursuant to these conditions is within, &c. (*then proceed as in the ordinary condition No.* 4, p. 131, *ante*).

5. The abstract of title [to Lots] is to commence with an indenture dated the day of 18 [being a conveyance on a sale, *or* being a mortgage (*a*) *or* the lease or underlease under which the vendor holds.] As to commencement of title.

6. Where the abstract commences with a will it is to Will.

(*a*) This condition is necessary where the abstract commences less than forty years before the day of sale (see V. & P. Act, 1874, s. 1), and is advisable in all cases, see note (*b*) to C. A. s. 3 (3), *ante*. If the deed stipulated as the commencement of the abstract contains recitals, s. 3 (1) of the Conveyancing Act prevents any requisition upon them. Where the deed commencing the abstract is a purchase deed or mortgage deed, it is advisable so to describe it, as being obviously a better commencement of title than a will or settlement.

be assumed that the testator was entitled in fee simple at the date of [his will and thenceforth up to (*a*)] his death and no evidence on this point shall be required.

Enfranchised copyholds.

7. As to Lot , which was formerly copyhold of the manor of , the abstract of title to the former copyhold interest is to commence with a surrender and admittance on a purchase in the year , and the title to the freehold is to commence with the deed of enfranchisement, dated in the year (*b*).

As to distinguishing titles.

8. The vendor is not to be required to distinguish the parts of any lot held under different titles, nor to distinguish the freehold from the copyhold part of the property [any lot], nor to distinguish copyholds of different manors.

As to discrepancy in measurements.

9. No objection or requisition is to be made in consequence of any discrepancy between the old and present measurements [of any lot].

Where documents subsequent to commencement of title cannot be produced.

10. If any document, dated years or upwards prior to the day of sale be not in the vendor's possession, and the possessor thereof is either unknown or refuses production, the recital of that document contained in any deed dated years or upwards prior to the day of sale is to be taken as conclusive evidence of the material contents and due execution thereof, and no further evidence, whether by production of the original or otherwise, is to be required of the contents of that document.

On a sale of lots held under one lease subdemises being made by one purchaser to the others.

11. Where it is provided in the particulars that the purchaser of any lot is to take an assignment of the lease of that and other lots and grant underleases of such other lots to the purchasers thereof, the assignments and underleases are to be made and granted accordingly, and each underlease and a counterpart thereof for delivery to the

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(*a*) The words in brackets are not required where the will is dated after 1838. If the will mentions the property, the condition may state that the will "specifically devises the property," or "contains a general devise of all the testator's property in the parish of," &c. A devise of this kind affords some evidence of the testator's title.

(*b*) Under s. 3 (2) of the Conveyancing Act the purchaser is not to call for the title to make the enfranchisement.

lessor are to be prepared, engrossed, and stamped by and in all respects at the expense of the purchaser, who is to be lessee thereunder, and are to be executed by the lessor and lessee respectively, and to contain all proper covenants by them having regard to the form of the principal lease out of which the underlease is to take effect, and the lessor is to give to the underlessee an acknowledgment of his right to production and delivery of copies of the principal lease and of any documents of title relating thereto retained by the lessor, and also an undertaking for safe custody thereof, and in case there should be no purchaser at this sale to take an assignment of the principal lease the grant of any underlease may be suspended until the principal lease is assigned to a purchaser, or the vendor may at his option in the meantime grant any underlease, and in case any difference should arise as to the form of any underlease or otherwise as to the grant thereof under this condition, or as to the payment of any costs or expenses connected therewith, or in case any other difference or question should arise as to the mode of giving effect to this condition or any matter arising thereout, such difference or question is to be settled by [*in sales by the Court* the Judge at Chambers, *otherwise some person to be named, or by arbitration as in No.* 43, *post*].

Bare legal estate.

12. Any bare outstanding legal estate (*a*) which a

Definition of a bare legal estate.

(*a*) i.e. a legal estate outstanding in a bare trustee who in reference to the V. & P. A. is defined to be a trustee to whose office no duties were originally attached, or who although such duties were originally attached to his office would, on the requisition of his *cestuis que trust*, be compellable in equity to convey the estate to them or by their direction and has been requested by them so to convey it: Dart, 517, 5th ed.; and see *Morgan* v. *Swansea Urban Sanitary Authority*, 9 Ch. D. 582, 585, per M. R.; but in the opinion of V.-C. Hall the words "have been requested by them so to convey it" are not a necessary ingredient in the definition of a bare trustee: *Christie* v. *Ovington*, 1 Ch. D. 279. A trustee with a beneficial interest in the trust estate is not a bare trustee within the Land Transfer Act, 1875, s. 48, which replaced s. 5 of the V. & P. A. (*Morgan* v. *Swansea, &c., Authority, ubi sup.*); nor is the husband of a married woman who is seised in her right a bare trustee within the Act 3 & 4 Will. 4, c. 74, s. 34 (*Keer* v. *Brown*, Johns. 138).

[the] purchaser may require to be got in is to be got in [and the title thereto traced] by him and at his own expense.

Tithes.

13. The rectorial tithes on the property were merged in the year . The abstract of title thereto is to commence with an indenture dated the day of , and the purchaser is not to require the production of the original nor any abstract or copy of the grant from the Crown of these tithes, nor any information as to the date of such grant, or otherwise with reference thereto.

Crown grant of tithes.

14. The purchaser is not to require production of the original nor any abstract or copy nor any other evidence of or information with respect to the grant from the Crown of the tithes.

Production of documents in the hands of mortgagees.

15. The documents relating to Lots to inclusive, some of which include all or several of these lots are now in the hands of the mortgagees and shall not be required by any purchaser of these lots to be produced or delivered over until the mortgages are redeemed, and if any purchaser of any of such lots requires his abstract to be verified he shall be bound himself at his own cost to obtain production of any documents in the possession of the mortgagees, and if he cannot obtain such production shall accept such verification of the abstract as the vendor is able to furnish, and shall bear all expenses incurred in obtaining production or consequent on production of such documents.

Allotments and exchanges under Enclosure Acts.

16. All exchanges and allotments made more than years before the day of sale under any Enclosure Act or award, are, unless the contrary appears, to be deemed duly made in respect of the title under which the lands taken in exchange or on allotment appear by the abstract or otherwise to have been since held, and no requisition or objection is to be made in respect of any such exchange or allotment, or in respect of the title to the land given in exchange, or in respect whereof the allotment was made.

Covenants in lease at a nominal rent.

17. The lease being at a nominal rent, the mere fact of possession under it at the time of completion of the

purchase shall be accepted as sufficient evidence of due performance of the lessee's covenants up to that time.

Building society mortgages.

18. Where any mortgage has been made to the trustees of a building society, and a receipt for the money secured appears to be indorsed on the mortgage deed and to be signed by the trustees and countersigned by the secretary of the society, the purchaser is to assume that the persons so signing were at the time of signing the duly appointed trustees and secretary respectively of the society, and accordingly that the receipt operated as a complete release and reconveyance of the mortgaged property, and is not to make any requisition, objection, or inquiry in reference to the appointment of the trustees or secretary or the constitution of the society (*a*).

Dower.

19. It is to be assumed that no wife or widow of any former owner is entitled to dower or freebench unless it appear on the abstract that he was married (*b*).

Origin of rents.

20. No information is to be asked for, nor is any other inquiry to be made as to the origin or creation of any quit or chief rent.

Recitals evidence.

21. Every recital or statement contained in any deed or other instrument dated years or upwards prior to the day of sale, is to be accepted as conclusive evidence of the matter or fact recited or stated (*c*).

Unstamped documents.

22. No objection is to be made on account of any document dated years or upwards prior to the day of sale being unstamped or not sufficiently stamped, and any document which [the] any purchaser shall require to be stamped or further stamped shall be procured to be so stamped by him and at his expense.

Unstamped or unregistered documents.

23. No objection is to be made on account of any document dated years or upwards prior to the day of sale being unstamped or insufficiently stamped or not

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(*a*) See the Act 38 & 39 Vict. c. 60, s. 16 (7).

(*b*) This condition is only necessary in case of an intestacy, or of a person of an age to have been married on or before 1st January, 1834.

(*c*) This condition is only required where the recital is contained in an instrument dated within twenty years (see V. & P. A. 1874, s. 2, *ante*).

being registered in the Deeds Registry, and any document which the purchaser may require to be stamped or further stamped or registered shall be procured to be so stamped or registered by him and at his expense.

Power of attorney to surrender copyholds.

24. It is to be assumed that every surrender or admittance pursuant to power of attorney was authorized by the power under which it appears on the court rolls to have been made, and production of the power is not to be required.

Sale of business as a going concern.

25. If the balance of the purchase and valuation money [for Lot] should be paid before the day of next the purchaser [of that lot] is to be let into possession [thereof] as a going concern on that day, and on and from that day is to become liable to discharge and shall discharge all wages and other outgoings connected with the business, and is to indemnify the vendor against all liabilities and outgoings of the business as from that day; but if for any reason possession [of Lot] is not delivered to the purchaser on the day aforesaid the business on and from that day is to be carried on by or under the direction of the vendor, at the risk and cost but for the benefit of the purchaser thereof until possession is delivered to him. And any question which may arise as to the balance due to or from the purchaser in respect of the business, and any other question which may arise in reference to the carrying on the same, is to be settled or decided [*in case of sale by the Court* by the Judge at Chambers] by the arbitration of, &c. [*See special condition No.* 43 *as to appointment of arbitrators and umpire*].

Mortgage term under sub-demise, the sale being made by purchasers from the mortgagees.

26. By deed dated the day of the property was sub-demised by way of mortgage for the residue, except the last days of the term, granted by the lease mentioned in the particulars, and the term so created was sold by the mortgagees under a power in the deed. [(*e*) The power contains a provision that after a

(*e*) If the power does not contain the clause here referred to, the words in brackets must be omitted. As to the statement in the particulars of the length of the term sold, see n. to next condition.

sale the mortgagor should stand possessed of the principal term for which the lease was granted in trust for the purchaser, and the benefit of this trust is included in the present sale.] The purchaser at this sale is to have an assignment from the vendor of the mortgage term only, and is not to require the vendor to procure any assignment of the principal term, nor to require him to shew in whom this principal term is now vested; and any assignment or vesting order, and all information and evidence requisite to procure an assignment or vesting order for the purpose of getting in the principal term, is to be searched for and obtained by and at the expense of the purchaser.

Mortgage term by sub-demise sold by mortgagees.

27. The mortgage deed under which the vendor[s] sell[s] demised the premises for the residue except the last days of the principal term granted by the lease mentioned in the particulars (*d*). By the deed the mortgagor is constituted a trustee of the premises for the residue of the term granted by the lease in trust to assign and dispose of the same as the persons entitled to the mortgage money shall direct, and contains a power of attorney to assign the term. The purchaser is to be entitled to the benefit (to be enforced or obtained at his own expense) of the trust, and to an assignment of the principal term under the power if and so far as the power is available, but shall not require it to be shewn that the power is now available, nor make any objection on account of its not being available.

Contents of leases.

28. An abstract or copy of the lease [*or* underlease] creating the term sold as mentioned in the particulars can be inspected at during a period of fourteen days prior to the day of sale or in the sale-room at the time of sale; and the purchaser is to be deemed to have notice of all the contents thereof, and such notice shall not be affected by any partial or incomplete statement of those contents in the particulars [*add in case of an*

(*d*) The particulars must state the term sold as being the residue less the specified days of the term granted by the original lease.

underlease, and no inquiry is to be made as to the contents of the superior lease].

Where there is a covenant not to assign.

29. The lease [*or* underlease] contains a restriction on assignment without license. The vendor is immediately after the sale to apply for and endeavour to obtain the necessary license, and if unable to obtain it within weeks from the day of sale is to be entitled to rescind the contract for sale in the same manner and upon the same terms as if the purchaser had made and insisted on a requisition which the vendor is unable to comply with.

Provision for underleases described as leases.

30. It is believed that every lot held by underlease is so described in the particulars, but if any lot described as held by lease should appear to be held by underlease the purchaser thereof is not to make any objection on this account, nor claim any compensation on the ground of misdescription (*a*).

As to covenants where leaseholds subject to underleases.

31. No objection shall be made on account of the covenants by the tenant in any underlease not corresponding with the covenants by the lessee in the lease under which the property is held (*b*).

Contents of tenants' leases.

32. Counterparts or copies of the leases or of the agreements (if in writing) under which the tenants hold can be inspected at during a period of fourteen days prior to the day of sale or in the sale-room at the time of sale, and the [each] purchaser is to be deemed to have notice of and to take, subject to the terms of all the existing tenancies, whether arising during the continuance or after the expiration thereof, and such notice shall not be affected by any partial or incomplete statement in the particulars with reference to the tenancies.

Leases by mortgagor alone.

33. No objection is to be made on the ground that any

(*a*) A purchaser is not bound to take a title by underlease instead of lease: *Madeley* v. *Booth*, 2 De G. & S. 718. An underlease may generally be known by its being for a term less a few days, or by the rent being reserved to or the covenants being entered into with the executors and administrators, and not the heirs.

(*b*) As to the risk incurred where these covenants do not correspond, see 4 Jarm. & By. Conv. 514.

lease or agreement for tenancy was made or entered into by a mortgagor without the concurrence of his mortgagees (*a*).

Easements, tenancies, fences, &c.

34. The property is [*or* the several lots are] sold subject to all rights of way, light, and other easements affecting the same, and to any subsisting liability under enclosure award, covenant, or otherwise, to repair the fences, roads, or streets, and to the rights of the tenants to fixtures (if any), or to their statutory rights; and the purchaser is to be deemed to have notice of the terms upon which all the tenants hold.

Apportioned tenants' rents.

35. The several purchasers shall take their conveyances subject to the apportioned rents stated in the particulars, and shall not require the assent of any tenant thereto, nor otherwise require such rents to be legally apportioned.

Apportioned rents of leaseholds.

36. Where any lots are held or are to be assigned at apportioned rents, the several purchasers shall accept their assignments at or subject to such apportioned rents, and shall not require the consent of the landlord to be shewn or to be obtained to the apportionment, nor require the rents to be otherwise legally apportioned.

Apportionment of land tax and tithe rent-charge.

37. The vendor is not to be required to obtain the apportionment of any land tax or tithe rent-charge.

Freedom from land tax and tithe rent-charge.

38. Freedom from land tax or tithe rent-charge is to be deemed sufficiently evidenced by the fact that the land-tax assessment books or the tithe commutation award, as the case may be, do not shew any land tax or tithe rent-charge to be payable [but the purchaser is to be furnished at his own expense, if he so require, with a statutory declaration that no land tax or tithe rent-charge has been paid for twelve years next before the day of sale (*b*)].

Enlargement of long term into fee simple.

39. Part of the property [Lots and , or parts thereof,] was [were] demised with other land for a term

(*a*) As to this, see now the C. A. s. 18 (1) (16), notwithstanding which the condition will always be necessary where the lease is not authorized by that section or by agreement.

(*b*) This last paragraph should only be inserted when it is possible to obtain the required statutory declaration.

of 500 years from, &c., 1790, by an indenture dated &c., and this term, so far as regards the part, now offered for sale, of the premises comprised therein, has been enlarged into a fee-simple, but the vendor[s] has [have] not the original, or any copy of the indenture of demise, nor any information relating to it other than such as appears on the abstract, and it shall be assumed unless the contrary appears that the term has been duly enlarged into a fee simple.

Identity.

40. No further or other evidence is to be required of the identity of the property [*or* lot or lots] described in the particulars with the property to which title is shewn by the abstract besides such evidence (if any) as may be gathered from the descriptions in the documents abstracted; [but the [any] purchaser is to be furnished at his own expense, if he so require, with a statutory declaration [by the vendor or some other person] that the property has [*or* lot or lots have] for the last twelve years been held and enjoyed in accordance with the title shewn thereto (*a*).]

Covenant by vendor as mortgagee or trustee.

41. The vendor, being a mortgagee [*or* a trustee], is to be required to give only the statutory covenant implied by reason of his being expressed to convey as mortgagee [*or* trustee].

Incumbrancers not to be required to release by separate instrument.

42. No release by a separate instrument of any incumbrance shall be required, nor shall any objection be made on the ground of expense or otherwise to any incumbrancer joining in the conveyance to the [any] purchaser.

Errors in description (compensation).

43. Measurements and quantities of land are to be deemed correct and are not to be the subject of compensation if incorrect. In other respects any incorrect statement, or any error or omission which may be discovered in the particulars of sale affecting the nature of the property [any lot] is not to annul the sale, but if pointed out before completion the vendor or the purchaser, as the case may be and require, is to pay or allow compensation on account thereof, and the amount in case of

(*a*) See note (*b*), p. 143.

dispute is to be settled by the arbitration of two referees, one to be appointed by the vendor, and the other by the purchaser, or by an umpire to be appointed by the two referees before they proceed on the reference, and the decision of the referees, if they agree, or of the umpire, if they disagree, is to be conclusive [*or where sale is under the Court* is to be settled by the Judge at chambers].

Errors in description (no compensation).

44. The property is [several lots are] believed to be and is [are] to be taken as correctly described, and any incorrect statement, error, or omission found in the particulars is not to annul the sale nor entitle the [any] purchaser to be discharged from his purchase, nor is the vendor or [any] purchaser to claim or be allowed any compensation in respect thereof (*a*).

Documents, where retained by vendor as beneficial owner.

45. The vendor is to retain all documents relating to any property not comprised in this sale, and to give a statutory acknowledgment of the right of the [each] purchaser to production of documents so retained, and to delivery of copies thereof, and also a statutory undertaking for safe custody thereof.

Where retained by vendor as mortgagee or trustee.

46. The vendor is to retain all documents relating to any property not comprised in this sale, and to give a statutory acknowledgment of the right of the [each] purchaser to production of documents so retained, and to delivery of copies thereof, but being a mortgagee [*or* trustee] is not to be required to give any undertaking or covenant for safe custody thereof (*b*).

Documents, where delivered to purchaser.

47. After the sale of all the lots, or of all the lots to which any set of documents relates, as the case may happen, the purchaser whose purchase-money is largest is to be entitled to the custody of such documents in the possession of the vendor as relate to any other lot as well as the lot or lots purchased by that purchaser [and

(*a*) This condition is convenient in cases of houses or small plots of land.

(*b*) A mortgagee or trustee may safely give an acknowledgment of the right to production and delivery of copies, as it only binds him to produce while he has possession, C. A. s. 9 (2), and to this he cannot reasonably object.

do not relate to any other property besides that comprised in this sale], but in respect of documents delivered to him which relate to the lot or lots of any other purchaser is to give to that other purchaser, if he so require, a statutory acknowledgment of his right to production and to delivery of copies thereof, and also a statutory undertaking for safe custody thereof. If any lot be not sold the vendor may until sale thereof retain all documents relating thereto, and in respect of any documents retained by the vendor he shall give to any purchaser who may so require the before-mentioned statutory acknowledgment and [*or* but not the (*a*)] undertaking, and every acknowledgment or undertaking given under this condition is to be prepared and approved on behalf of all parties thereto at the expense of the person to whom it is given.

(*a*) These words apply in case of a mortgagee or trustee selling.

SECT. III.

SPECIAL CONDITIONS APPLICABLE TO SALES UNDER THE COURT.

Certificates, proofs in proceedings, &c., to be evidence.

48. All facts or matters appearing to be proved or to be certified by the chief clerk, or to be stated in any judgment or order in the action [proceedings] in which this sale is made are to be deemed thereby sufficiently and conclusively evidenced, and the purchaser is to assume that all necessary and proper consents preliminary to a sale have been obtained (*a*), and is not to require the concurrence in his conveyance of any persons beneficially interested whose rights appear to be bound by the judgment or order under which the sale is made (*b*).

Reservations how to be provided for.

49. Where a lot is sold subject to or with a reservation of any right, effect shall (in case of difference) be given thereto in such manner and at the expense of such persons as the Judge may direct.

Production of documents in hands of mortgagees.

50. The documents relating to Lots are in the hands of mortgagees, and production thereof is not to be

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(*a*) It may be as well to insert these words as to consent, though they scarcely seem necessary now, having regard to C. A. s. 70. A purchaser must, it is conceived, still see that all proper persons appear to be parties to the action or other proceeding, but this appearing, he is absolved from inquiring further, see note to s. 70 of the Act, *ante*.

Purchaser must still see to parties to action.

(*b*) These words as to the concurrence of persons beneficially interested are convenient but not necessary. The complete title is obtained by a conveyance of the legal estate, and a good discharge for the purchase-money. Consequently in sales by the Court, the only necessary party to the conveyance is the person having, or enabled to convey, the legal estate; as for instance, a mortgagee or trustee, or a person appointed by the Court to convey. The discharge for the purchase-money is obtained by payment into Court, and all equities are bound. But it often happens that a purchaser asks for the concurrence in the conveyance of persons having equitable interests, and it is convenient to be able to point to a condition expressly excluding his right to require their concurrence.

Legal estate and discharge for purchase-money make a good title.

required until the mortgages are satisfied (*a*). If a purchaser of any of these lots require his abstract to be verified, he is himself at his own cost to obtain production of documents in the possession of any mortgagee, and if he cannot obtain such production, is to accept such verification of the abstract as the vendor is able to furnish, and is to bear all expenses incurred in obtaining or consequent on production of such documents.

As to application of money in discharge of incumbrances.

51. The sale is made for payment of incumbrances affecting all or some of the lots. Each purchaser is, notwithstanding these incumbrances, to pay his whole purchase-money into Court, as provided by these conditions, to form a common fund to be applied under the direction of the Court in payment of these incumbrances, and is not, after having accepted the title to any lot purchased by him, to object [to the setting apart out of the common fund of money to answer the claim of incumbrancers having priority over the interests of the parties to the action, and not consenting to the sale, nor (*b*)] to payment out of the [balance of the] common fund of the amount due to any incumbrancer consenting to the sale, or otherwise bound by the order for sale.

(*a*) This can be done under s. 5 of the C. A. out of the purchase-moneys when paid into Court (note on that section *ante*). Where the mortgages are subsequent to 1881, and come within s. 16 of the C. A., this condition is unnecessary; the mortgagor can procure production under that s., and the expense incurred falls on the purchaser, C. A. s. 3 (6).

(*b*) The words in brackets should be omitted where there are no prior incumbrancers whose claims are to be satisfied by setting apart a fund under C. A. s. 5 (see note to that s. *ante*). Where there are such prior incumbrancers, the funds for them must be set apart first, otherwise there might not be sufficient to pay them, and the purchasers could not get their conveyances. It will be for the purchasers to see that there is sufficient set apart under s. 5 to answer prior incumbrancers. If there is, there can be no difficulty in completing. If there is not, the sale of all the lots must fail, as before the Act in like case and the order for sale must be contingent on this, see Minutes of suggested Judgment, *post*.

52. The conveyance to the [each] purchaser is to be made either by a vesting order, or by a person appointed for the purpose by the Court, who is to be required to give only the statutory covenant against incumbrances implied by reason of his being expressed to convey as trustee, and the vesting order, or the order appointing a person to convey, shall be obtained by the [each] purchaser at his own expense.

As to covenant by person appointed to convey.

CHAPTER III.

FORMS IN DEEDS AND WILLS.

SECT. I.

Forms in Purchase Deeds.

Purchase Deed. No. 1.

Covenant by purchaser of leasehold to pay rent, &c.

And [*purchaser*] hereby (*a*) covenants with [*vendor(s)*] (*b*) that [*purchaser*] or the persons deriving title under him will henceforth from time to time duly pay all rent becoming due under the said lease, and observe and perform all the covenants and conditions therein contained, and henceforth on the part of the lessee[s] to be observed or performed, And also will at all times hereafter save harmless and keep indemnified [*vendor(s)*] and his [their] estate and effects from and against all proceedings, claims, and expenses on account of any omission to pay the said rent or any breach of any of the said covenants and conditions.

Heirs, executors &c., omitted of covenantor;

(*a*) The heirs, executors, and administrators of the covenantor are bound without being mentioned, the heirs by C. A. s. 59, and the executors or administrators by the common law (Wms. Exors. 1728, 8th ed.). The assigns of the covenantor are not mentioned in this and similar covenants, *post*, because they are personal covenants. The mention of the assigns of the covenantor has no force except in real covenants, the burden of which is intended to be thrown on the assignee of the land, as to which see note to C. A. s. 58, *ante*.

of covenantee.

(*b*) This covenant is by C. A. s. 58 (2) deemed to be made with the executors, administrators, and assigns of the covenantee. Where the covenant relates to lands of inheritance, it is deemed to be made with the heirs and assigns of the covenantee (subs. 1). Covenantee includes covenantees.

No. 2.

Acknowledgment of right to production.

AND [*vendor(s)*] hereby acknowledge[s] the right of [*purchaser*] to production of the documents mentioned in the schedule hereto, and to delivery of copies thereof (*a*).

No. 3.

Undertaking for safe custody.

AND hereby undertakes for the safe custody thereof.

(*a*) This acknowledgment may safely be given by trustees or mortgagees. As to the obligations imposed by, and the rights under an acknowledgment, see C. A. s. 9 (1)–(8).

SECT. II.

FORMS IN MORTGAGES.

MORTGAGES.

No. 4.

Covenant for payment of principal.

AND [*mortgagor*] hereby covenants with [*mortgagee(s)*] (*a*) to pay to him [them] on the day of next [*generally six calendar months from date of deed*] the sum of £ , with interest thereon in the meantime at the rate of per cent. per annum, computed from the date hereof

[*In case of further advances add:*]

Further advances,

AND also within three calendar months from the date when any further money shall be advanced by or become due to [*mortgagee(s)*] (other than for interest) upon the security of these presents to pay to him [them] the amount thereof, with interest thereon at the rate aforesaid from the date of the same being advanced or becoming due;

and interest.

AND also so long as any principal money shall remain due under these presents after the day aforesaid to pay to [*mortgagee(s)*] interest thereon at the rate aforesaid, by equal half yearly payments on the day of and the day of in every year.

No. 5.

Trust of principal term in mortgage by sub-demise.

[*To follow demise of leaseholds:*]

AND [*mortgagor*] hereby covenants with [*mortgagee(s)*] that [*mortgagor*] will henceforth stand possessed of the premises comprised in the said lease for the residue of the term thereby granted In trust for [*mortgagee(s)*] and to assign and dispose of the same as he [they] or the persons or person entitled to the principal money for the time being due on these presents shall from time to time direct, but subject to the proviso for redemption hereinafter contained

No. 6.

(That is to say,)—IT IS HEREBY PROVIDED AND AGREED

Executors, &c., of mortgagee omitted.

(*a*) It is unnecessary to specify the "executors, administrators, or assigns" of the mortgagee. The right to sue on the covenant devolves on them without their being mentioned. By C. A. s. 60, where the covenant is with two or more, the payment is to be made to the person on whom the right to sue devolves; therefore it is unnecessary to mention the survivor or survivors of them. The same principle applies to the subsequent forms of covenant where there is any other act to be done.

that on payment on the day of next [*the day mentioned for payment of principal in Form No.* 4] by [*mortgagor*] or the persons deriving title under him to [*mortgagee(s)*] or the persons deriving title under him [them] of the sum of £ , with interest thereon in the meantime at the rate of per cent. per annum, the premises hereinbefore conveyed [demised] shall at the request and cost of [*mortgagor*], or the persons deriving title under him, be duly reconveyed [surrendered] to him or them (*a*).

No. 6.

Proviso for redemption of freeholds and leaseholds by sub-demise.

[*To follow covenant to surrender copyholds:*]

No. 7.

SUBJECT to a condition for making void the said surrender on payment on the day of next [*the day mentioned for payment of principal in Form No.* 4] by [*mortgagor*] or the persons deriving title under him to [*mortgagee(s)*] or the persons deriving title under him [them] of the sum of £ , with interest thereon in the meantime at the rate of per cent. per annum.

Proviso for redemption of copyholds.

AND [*mortgagor*] hereby covenants with [*mortgagee(s)*] that the premises hereinbefore covenanted to be surrendered shall henceforth stand charged with the payment of all moneys hereby secured: And that until surrender [*mortgagor*] and all persons deriving title under him will stand possessed thereof upon trust for [*mortgagee(s)*], and to dispose of the same as he [they] or the persons deriving title under him [them] shall direct (*b*).

Charge on copyholds.

AND [*mortgagor*] hereby covenants with [*mortgagee(s)*] in manner following, that is to say, that so long as any money remains due under these presents [*mortgagor*] will not, without giving notice in writing to [*mortgagee(s)*], go beyond the limits (*c*) permitted by the policy [ies] hereby

No. 8.

Covenant to keep up Life Policy.

(*a*) The proviso for redemption may be shortened by reference to the covenant for payment, but it is more convenient that the proviso should be complete in itself.

(*b*) This clause operates as a charge which enables a sale under the statutory power of sale. The statutory power of sale is conferred only under a mortgage or charge by deed: C. A. s. 19, and s. 2 (vi.). The legal estate must be got in under the Trustee Acts or otherwise.

(*c*) Going beyond limits would not make a policy void if the proper additional premium be paid, but might throw an additional charge on the mortgagee.

MORTGAGES. No. 8.

assigned, or any new policy to be effected as hereinafter provided, or do or permit anything whereby any such policy may become void or voidable, or whereby [*mortgagee(s)*] may be prevented from receiving or recovering any money thereby assured; And that [*mortgagor*] will immediately, at his own cost, in case any such policy should become voidable, do all things necessary for restoring the same; And in case any such policy should become void, also do and furnish all acts, certificates, and things necessary or proper to enable [*mortgagee(s)*] to effect a new policy on the life of [*mortgagor*] in the name(s) of [*mortgagee(s)*] (*a*) for the amount which would have become payable under the void policy if it had remained in force and [*mortgagor*] had died; And that every such new policy, and the money payable thereunder, shall be subject to the like right of redemption, and be held and applied in like manner as the policy[ies] hereby assigned and the money payable thereunder; And further, that [*mortgagor*] will during the continuance of the present security duly pay every sum from time to time payable for keeping on foot every policy for the time being subject to this security, and will make each such payment within three days after the first day on which it becomes payable, and will forthwith deliver the receipt for [*or* other satisfactory evidence of (*b*)] every such payment to [*mortgagee(s)*]; and that in default [*mortgagee(s)*] may pay every such sum, and [*mortgagor*] will repay to the [*mortgagee(s)*] all sums so paid, and all costs and expenses incurred in restoring any voidable policy or in effecting any new policy or otherwise in relation to the premises, with interest for the same at the rate of per cent. per annum from the time of each payment; And until repayment, the premises hereinbefore conveyed [demised and assigned], and every new policy to be effected as

(*a*) The addition of the survivors or survivor, or of any other person to whom the right to sue on this covenant devolves is not necessary, see C. A. s. 60.

(*b*) If the mortgage is not a first mortgage the receipts may have to be delivered to the first mortgagee.

aforesaid, shall stand charged with the amount so to be repaid and the interest thereon.

No. 9.

Covenant to keep up Fire Insurance.

AND [*mortgagor*] hereby covenants with [*mortgagee(s)*] that so long as any money remains due under these presents [*mortgagor*], or the persons deriving title under him, will insure and keep insured all buildings upon the premises hereby conveyed [demised] against loss or damage by fire, in at least the sum of £ [*or*, a sum equal to two-thirds of the amount required to rebuild the same in case of total destruction], and will pay every sum from time to time payable for keeping on foot every such insurance within three days after the first day on which it becomes payable, and will forthwith deliver [*or*, will from time to time when required produce] to [*mortgagee(s)*] the policy or policies of insurance [or other proper evidence of the subsistence thereof], and also when required deliver to him [them] the receipt for [or, other satisfactory evidence of payment of (*a*)] every sum payable as aforesaid and in default that [*mortgagor*] will repay to [*mortgagee(s)*] every sum which under the statutory power for the purpose may be expended by him [them], or persons deriving title under him [them], in keeping the said buildings insured to the amount aforesaid, with interest thereon at the rate of per cent. per annum from the time of each payment (*b*); AND IT IS HEREBY AGREED that the covenant as to insurance hereinbefore contained shall so long as the same is duly performed be in satisfaction of the statutory right of the [*mortgagee(s)*] to effect and keep on foot Fire insurances.

Covenant to satisfy statutory right.

No. 10.

Provision for reduction of interest, payment being continuous.

AND [*mortgagee(s)*] hereby covenant(s) with [*mortgagor*] that if on every day of and day of while any principal money remains due under these presents, or within thirty days next after each of the said days respectively, there should be continuously paid

(*a*) The receipts may have to be delivered to a prior mortgagee or some one else.

(*b*) C. A. s. 19, gives the mortgagee a charge for the amount paid and interest.

MORTGAGES.

No. 10.

to [*mortgagee(s)*] interest on such principal money at the rate of [*reduced rate*] per cent. per annum, [and there should not be any breach of any obligation, statutory or otherwise, binding on the mortgagor (*a*), or of any of the covenants whether express or implied, hereinbefore contained and on the part of [*mortgagor*] to be observed or performed, other than and besides the covenant for payment of the principal money and interest hereby secured (*b*)], then [*mortgagee(s)*] will accept interest for the principal money so for the time being due at the rate of [*reduced rate*] per cent. per annum, so long as interest at that rate continues to be paid within the thirty days aforesaid (*c*).

No. 11.

Provision for reduction of interest half year to half year.

AND [*mortgagee(s)*] hereby covenant(s) with [*mortgagor*] that if on the day of or the day of (as the case may be) in any half-year, while any principal money remains due under these presents or within thirty days next after such day, there should be paid to [*mortgagee(s)*] interest on such principal money at the rate of [*reduced rate*] per cent. per annum [and there should not be any breach of any obligation, statutory or otherwise, binding on the mortgagor, or of any of the covenants, whether express or implied, hereinbefore contained, and on the part of [*mortgagor*] to be observed or performed during the half-year immediately preceding that day other than and besides the covenant for payment of the principal money and interest hereby secured (*d*)] then and in respect of every half-year for which such

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(*a*) As for instance the obligation to deliver the counterpart of leases, C.A. s. 18 (8).

(*b*) This covenant is always broken. The words in brackets and similar words in Nos. 11 and 12 will only be inserted where the statutory power of leasing is not excluded, or where there is a covenant as to Fire Insurance, or Life Policies, or rent of leaseholds, or the like.

(*c*) There may sometimes be a doubt whether an omission to pay interest for one half year, within thirty days, puts an end to the right of reduction: see *Stanhope* v. *Manners*, 2 Eden, 197. In this form it does put an end to the right. See the next form, where the omission only puts an end to the right for that half-year.

(*d*) As to these words in brackets, see note (*b*) to last form.

interest shall be so paid [*mortgagee(s)*] will accept interest for the principal money so for the time being due at the rate of [*reduced rate*] per cent. per annum.

No. 12.

Agreement for mortgage to continue for time certain.

AND [*mortgagee(s)*] hereby covenant(s) with [*mortgagor*] that if on each half-yearly day hereinbefore fixed for payment of interest, and continuously during the period of years from the date of these presents, or within thirty days after each such day, there should be paid to [*mortgagee(s)*] interest on the principal money hereby secured at the rate of per cent. per annum up to that half-yearly day [and there should not be any breach of any obligation, statutory or otherwise, binding on the mortgagor or of any of the covenants, whether expressed or implied, hereinbefore contained, and on the part of [*mortgagor*] to be performed or observed, other than and besides the covenant for payment of the principal money and interest hereby secured (*a*)], then [*mortgagee(s)*] or the persons deriving title under him [them] will not before the expiration of the said period of years require payment of the principal money hereby secured, or any part thereof (*b*).

AND [*mortgagor*] hereby covenants with [*mortgagee(s)*] that the whole principal money hereby secured shall be allowed to remain on this security during the said period of years.

PROVIDED ALWAYS and it is hereby agreed that notwithstanding the restriction hereinbefore contained on the right to require payment of principal money, such principal money shall be deemed to become due within the meaning of The Conveyancing and Law of Property Act, 1881, and for all the purposes of that Act on the day on which such principal money is hereinbefore covenanted to be paid (*c*).

(*a*) As to these words in brackets see note (*b*) to Form No. 10, *ante*.

(*b*) As to waiver of the default in payment of interest, see *Longridge* v. *Payne*, 2 J. & H. 423; *Keene* v. *Briscoe*, 8 Ch. D. 201.

As to waiver of default in payment of interest.

(*c*) This clause seems required to prevent any question as to the date when the statutory powers of sale, &c., arise.

MORTGAGES.

No. 13.

Power of consolidation reserved.

AND IT IS HEREBY AGREED that [*mortgagee(s)*] and the persons deriving title under him [them] shall so far as may be have the same right to consolidate two or more mortgages so that one shall not be redeemed alone without the other or others as would have existed if the Conveyancing and Law of Property Act, 1881, had not been passed.

No. 14.

Power of immediate sale, &c.

AND IT IS HEREBY AGREED that notwithstanding s. 20 of the Conveyancing and Law of Property Act, 1881, [*mortgagee(s)*] shall have and may at any time after the said day of next exercise and put in force all the powers and remedies conferred by that Act on mortgagees in like manner as if the said s. 20 had not been contained in that Act.

No. 15.

Mortgagor not to grant leases without consent.

AND IT IS HEREBY AGREED that [*mortgagor*] or any person deriving title under him shall not, except with the consent in writing of [*mortgagee(s)*] or the person or persons for the time being deriving title under him [them], exercise the powers of leasing or of agreeing to lease conferred by the Conveyancing and Law of Property Act, 1881, on a mortgagor while in possession, but it shall not be necessary to express such consent in any such lease (*a*).

(*a*) As to the effect of entirely excluding the mortgagor's power of leasing, see note to C. A. s. 18, p. 55, *ante*. For agreements varying the powers of leasing of the C. A. and applying the powers of leasing in the Act to mortgages previously made, see Precedents XXVII. and XXVIII., p. 224, *post*.

Attornment clause not advisable.

It is not advisable to insert an attornment clause in a mortgage deed having regard to the dicta in *In re Stockton Iron Furnace Co.*, 10 Ch. D. 356, 357, to the effect that it makes the mortgagee liable to account as mortgagee in possession. The clause is of little use unless the mortgage deed be registered as a bill of sale under 41 & 42 Vict. c. 31, s. 4: see *Conelly* v. *Steer*, 7 Q. B. D. 520, *Lyons* v. *Tucker*, ib. 523. A power of distress is also of little use unless given by a registered deed. A judgment entered up against the mortgagor is the security most readily available against chattels.

SECT. III. SETTLEMENTS.

FORMS IN SETTLEMENTS.

No. 16.

Trust to sell real estate.

UPON TRUST to sell the said premises or any part thereof, but during the joint lives of [*husband*] and [*wife*] or the life of the survivor of them with their consent or the consent of such survivor in writing (*a*).

Trust of proceeds of sale.

AND IT IS HEREBY AGREED that the trustees or trustee for the time being of these presents, hereinafter called the trustees or trustee, shall stand possessed of the net money to arise from any such sale (after payment thereout of all costs incidental thereto) and also of the rents and profits of the said premises until sale, UPON the trusts and subject to the powers and provisions declared concerning the same by an indenture intended to bear even date with these presents and to be made between &c.

Power to postpone sale.

AND IT IS HEREBY AGREED that the said premises may be retained unsold as long as the trustees or trustee think proper, but in the meantime shall be deemed personal estate and devolve as such [*add powers of leasing, and of appointing new trustees, Forms Nos.* 38 *and* 46, *post*)].

No. 17.

Trust to invest.

UPON TRUST (*b*) with the consent of [*husband*] and [*wife*] during their joint lives and of the survivor of them during his or her life and after the death of the survivor at the discretion of the trustees or trustee for the time being of these presents hereinafter called the trustees or trustee, to invest the said money in the names or name of the trustees or trustee

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(*a*) The mode of selling is provided for by C. A. s. 35, the power to give receipts is conferred by s. 36. Words of survivorship are not necessary, s. 38; nor the words "executors or administrators of such survivor or their or his assigns," see s. 30, under which the personal representatives of the survivor become trustees, and s. 31, under which new trustees have the same powers as the original trustees.

(*b*) See note to last form.

SETTLEMENTS.
No. 18.

Investment clause.

IN OR UPON any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England or Wales, including the security of a term of three hundred years or upwards unexpired and not liable to be determined under a proviso for re-entry (*a*), or in the stock of the Bank of England or Metropolitan Board of Works, or in the stock or securities of the Government of India for the time being, or the stock or securities not payable to bearer, [*or* whether payable to bearer or not (*b*)], of the Government of any British Colony or Dependency, or in the purchase of the preference or wholly or partially guaranteed stock or shares or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock of any railway company in Great Britain incorporated by special Act of Parliament, and having within one year before the date of investment paid a dividend on its ordinary stock or shares, or in or on the stock, shares, debentures or debenture stock of any railway company in India, the dividends or interest whereon are, is, or shall be wholly or partially or contingently guaranteed by the Government of India for the time being, or by the Secretary of State for India, on behalf of such Government, with power for the trustees or trustee from time to time with such consent or at such discretion as aforesaid to change such investments for others of a like nature.

No. 19.

Large power of investment.

IN OR UPON any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real or leasehold securities in England or Wales, and in the case of leasehold securities without being bound to make any investigation of the lessor's title or being subject to any liability for omitting so to do, or on the security of any life interest in any real or personal property,

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Long terms not real securities.

(*a*) It seems that a long term is not now considered real security: *Re Boyd*, 14 Ch. D. 626.

(*b*) If the words in brackets are used the Form No. 44, *post*, enabling the trustees to deposit securities to bearer for safe custody, should be added.

No. 19.

together with an insurance on the life, and so that any security taken under these presents may be either subject or not to any prior incumbrances, or in the stock of the Bank of England or Metropolitan Board of Works, or in the stock or securities of the Government of India for the time being, or the stock or securities (whether payable to bearer or not), of the Government of any British Colony or Dependency, or of any foreign government, state, or municipality, or in the purchase of the stock or shares, ordinary or otherwise, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway, canal, dock, harbour, gas or water company, or other public company carrying on business in Great Britain or India, or any British Colony or Dependency, or on the bonds, stock, or other securities of any municipal corporation or local or harbour authority or other public body in Great Britain or in any British Colony or Dependency, or of any incorporated company in Great Britain established for the purpose of investing money in the purchase or on mortgage of land in Great Britain or in any British Colony or Dependency, with power for the trustees or trustee from time to time with such consent, or at such discretion as aforesaid to change such investments for others of a like nature.

No. 20.

Trusts of investments.

AND IT IS HEREBY AGREED that the trustees or trustee shall stand possessed of the said investments hereinafter called the trust fund, and the annual income thereof, upon the trusts and subject to the powers and provisions following, that is to say,

No. 21.

For wife for separate use for life, then for husband for life.

UPON TRUST to pay the annual income of the trust fund to [*wife*] during her life for her separate use independently of any husband, and without power of anticipation, And after her death to pay the said income to [*husband*] if he shall survive her during the residue of his life, And after the death of both IT IS HEREBY AGREED that the capital of the trust fund shall be held

SETTLEMENTS. No. 22.

Trust after death of wife for husband until alienation, and then for him or issue of marriage, &c. (*a*)

UPON TRUST after the death of [*wife*] if [*husband*] should be then living, and should not be an undischarged bankrupt, or should not have executed, done, or suffered any act, deed, or thing, or if no event should have happened, whereby the trust next hereinafter declared would if subsisting be determined:

Then to pay the annual income of the [*where the husband's trust fund and the wife's trust fund are settled, say* wife's] trust fund to [*husband*] during his life or until he attempts to alien, charge, or anticipate the same or any part thereof, or is adjudged a bankrupt, or takes proceedings for liquidation in bankruptcy, or makes any arrangement or composition with his creditors having the effect of a charge upon or alienation of the said annual income, or any part thereof, or until he does or attempts to do or suffers any other act or thing, or until any other event happens, whereby if the same income were payable to him absolutely for his life he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the death of [*husband*], which first happens, the trust hereinbefore declared for payment to him of the said income is to determine;

And if the same trust should fail or determine in his lifetime, then UPON trust during the residue of the life of [*husband*] to apply the annual income of the [*or* the wife's] trust fund for the maintenance and support or otherwise or the benefit of all or any one or more exclusively of the other or others of [*husband*] and the issue of the said intended marriage as the trustees or trustee in their or his sole discretion, without being liable to account

(*a*) This trust is applicable only to property not settled by the husband. The payment of the income of property settled by himself cannot be made to cease on his alienation or bankruptcy (see *Phipps* v. *Lord Ennismore*, 4 Russ. 131), except to the extent of the fortune which on his marriage he received from his wife (*Lester* v. *Garland*, 5 Sim. 205). The discretionary trust in the text may be exercised so as to exclude the husband's creditors (*Holmes* v. *Penney*, 3 K. & J. 91).

for the exercise of such discretion, think fit, or if there should be no issue of the said intended marriage, or such issue should fail during the lifetime of [*husband*], Then for the maintenance, support, or otherwise for the benefit of all or any one or more exclusively of the other or others of [*husband*] and the person or persons who would if he were actually dead be entitled to the [*or* the wife's] trust fund, or the income thereof, as the trustees or trustee in their or his sole discretion, without being liable to account as aforesaid, think fit.

AND IT IS HEREBY AGREED that after the death of the survivor of [*wife*] and [*husband*] the capital and income of the [*or* the wife's] trust fund shall be held [*Form No.* 24].

No. 23.

Trusts of two funds. Annual sum only to husband out of wife's fund.

AS TO THE HUSBAND'S TRUST FUND, Upon Trust to pay the annual income thereof to [*husband*] during his life, and after his death to pay the same income to [*wife*] during the residue of her life for her separate use, independently of any husband and without power of anticipation,

AND AS TO THE WIFE'S TRUST FUND, Upon Trust to pay the annual income thereof to [*wife*] during her life for her separate use independently of any husband and without power of anticipation, and after her death out of the last-mentioned income to pay the annual sum of £ to [*husband*] during the residue of his life (*a*), the same to be deemed to accrue due from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the end of six calendar months from the death of [*wife*] if [*husband*] should be then living:

AND IT IS HEREBY AGREED that the capital of the husband's trust fund after the death of the survivor of [*wife*] and [*husband*], and also the capital of the wife's trust fund after the death of [*husband*], and subject to

(*a*) If the annual sum is to be made determinable on alienation, &c., the last form can be adapted.

SETTLEMENTS. No. 23.

setting apart a portion thereof, to provide for payment of the said annual sum of £ to [*husband*], if he should be the survivor, shall be respectively held

No. 24.

Trusts for issue as husband and wife or the survivor appoint. In default for children.

IN TRUST for all or such one or more exclusively of the other or others of the issue of the said intended marriage, whether children or remoter issue (*a*), at such time and, if more than one, in such shares and with such gifts over, and generally in such manner for the benefit of such issue or some or one of them as [*husband*] and [*wife*] shall by deed, revocable or irrevocable, from time to time or at any time jointly appoint, And in default of and until and subject to any such appointment, then as the survivor of them and as regards [*wife*], whether covert or sole, shall by deed revocable or irrevocable, or by will or codicil appoint, And in default of and until and subject to any such appointment

IN TRUST for all or any the children or child of the said intended marriage [other than and except such son as hereinafter mentioned and excepted (*b*)], who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry under it, and if more than one in equal shares.

Hotchpot clause.

PROVIDED ALWAYS that any child who or whose issue takes any part of the trust fund(s) under any appointment in pursuance of either of the powers lastly hereinbefore contained shall not, in the absence of any appointment to the contrary, take any share in the unappointed part thereof without bringing the share or shares appointed to him or her or to his or her issue into hotchpot, and accounting for the same accordingly.

[*Add if required*]

No. 25.

Clause excluding son entitled to settled estates.

PROVIDED ALWAYS, and it is hereby agreed, that the excepted son hereinbefore referred to who is to be excluded from taking under the trust in default of appointment hereinbefore contained, is an eldest or only son or

(*a*) It is not necessary to restrict this power within the limits allowed by the rules against perpetuity: see p. 184 (*a*).

(*b*) The words in brackets to be used only if the next proviso is used.

No. 25.

any other son of the said intended marriage who before attaining the age of twenty-one years becomes, or would if of full age be, entitled to the possession or to the receipt of the rents and profits of the lands and hereditaments in the county of devised by the will of [*or* comprised in the settlement dated, &c., and made between &c.], and of which hereditaments [*husband*] is now tenant for life in possession, or who before attaining that age becomes entitled to the first vested estate of freehold in remainder immediately expectant on the estate for life of [*husband*] under the said will [*or* settlement];

AND if there should be no child of the said intended marriage other than and except as aforesaid who attains a vested interest under the trust in default of appointment hereinbefore contained, then the capital of the trust fund(s) is to be held In trust for such eldest son or other excepted son of the said intended marriage as hereinbefore mentioned, if and when he attains the age of twenty-one years, and to be then vested and not before; and if there should be more than one such excepted son, then In trust for the last survivor of such eldest and other excepted sons absolutely if and when he attains the age of twenty-one years and becomes such survivor, whichever of the said events should last happen, and to be then vested and not before.

No. 26.

Advancement clause.

AND IT IS HEREBY AGREED that the trustees or trustee may at any time or times after the death of [*husband*] and [*wife*] or in their, his or her lifetime, with their, his or her consent in writing, raise any part or parts, not exceeding together one half of the presumptive or vested share of any child or other issue of the said intended marriage, under the trusts aforesaid, and may pay or apply the same for his or her advancement or benefit as the trustees or trustee think fit.

No. 27.

Trust of surplus income

AND IT IS HEREBY AGREED (*a*) that if [*husband*] shall survive [*wife*] then the annual income of the wife's trust

(*a*) This Form is applicable where Form No. 23 or 32 is used.

SETTLEMENTS. No. 27. after payment of annuity to husband.

fund remaining after payment of any annual sum payable or applicable under these presents to or for the benefit of [*husband*] shall be paid or applied to or for the benefit of the issue of the said intended marriage, or otherwise in like manner as such income would for the time being be payable or applicable if [*husband*] were dead, and having regard to any appointment for the time being actually made under the powers hereinbefore contained, but without regard to any appointment capable of being made but not actually made under those powers.

No. 28. Trusts in default of children.

AND IT IS HEREBY AGREED, that if there should not be any child of the said intended marriage who attains a vested interest under the trust in default of appointment hereinbefore contained then subject to the trusts and powers hereinbefore contained,

No. 29. As to husband's trust fund.

THE HUSBAND'S TRUST FUND (*a*) and the income and statutory accumulations (if any) of the income thereof, or so much thereof as shall not have become vested or been applied under any of the trusts or powers affecting the same, shall, after the death of [*wife*] and such failure of children as aforesaid, be held IN trust for [*husband*], absolutely,

No. 30. As to wife's trust fund.

AND THE WIFE'S TRUST FUND, and the income and statutory accumulations (if any) of the income thereof, or so much thereof as shall not have become vested or been applied under any of the trusts or powers affecting the same shall, after the death of [*husband*] and such failure of children as aforesaid, be held IN trust for such person or persons and purposes as [*wife*] shall, while not under coverture, by deed, revocable or irrevocable, or shall, whether covert or sole (*b*), by will or codicil appoint;

(*a*) This form is applicable where funds are settled by or on behalf of the husband and wife respectively; but where only one fund is settled it should be called the trust fund and the required trust in this form adapted to it.

Powers of wife in default of children.

(*b*) The testamentary power should be given in all events, and not merely if the wife dies first: *Holliday* v. *Overton*, 14 Beav. 467; *Trimmell* v. *Fell*, 16 Beav. 537; and *Willock* v. *Noble*, L. R. 7 H. L. 580. Power of appointment by deed while not under coverture is

And in default of and until and subject to any such appointment, Upon the trusts following (that is to say) If [*wife*] should survive [*husband*], then in trust for her absolutely; BUT if she should die in the lifetime of [*husband*], then In trust for the person or persons who under the statutes for the distribution of the effects of intestates would have become entitled thereto at her death if she had died possessed thereof intestate and without ever having been married (*a*), such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes.

No. 31.

Application of rents of real estate until sale.

AND IT IS HEREBY AGREED that until all the hereditaments by the recited indenture of even date herewith conveyed on trust for sale are sold the trustees or trustee shall pay or apply the net rents and profits thereof or of the unsold part thereof (after payment thereout of all rates, taxes, payments for insurance, repairs, and other outgoings which any tenant or other person is not liable to pay), upon and subject to the like trusts and powers upon and subject to which the annual income of the trust fund [*or* the husband's trust fund, *or* the wife's trust fund, *as the case may require*], is payable or applicable under the trusts herein contained.

No. 32.

Power to wife to appoint to husband an annual sum.

AND IT IS HEREBY AGREED that [*wife*] may, notwithstanding coverture, by will or codicil appoint that after her death any annual sum or sums not exceeding in the whole the annual sum of £ , shall be paid to or for the benefit of [*husband*] during the residue of his life, or any less period, out of the annual income of the wife's trust fund, and the annual sum or sums so appointed shall be paid accordingly.

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required, otherwise on dissolution of the marriage it might be necessary to apply to the Divorce Court with reference to the settled property under 22 & 23 Vict. c. 61, s. 5, as extended by 41 Vict. c. 19, s. 3.

Effect of words "without ever having been married" in case of a widow.

(*a*) The words "without ever having been married" in the settlement of a widow on her second marriage, exclude a child by her former marriage (*Emmins* v. *Bradford*, 13 Ch. D. 493). In such a settlement say "without having contracted the now intended marriage."

SETTLEMENTS. No. 33.

Power to wife to make settlement on future marriage.

PROVIDED ALWAYS that if [*wife*] should marry again, then, without prejudice to any appointment which may have already been made under the powers hereinbefore contained, she may, either in contemplation of or after any subsequent marriage and notwithstanding coverture, from time to time by deed, revocable or irrevocable, or by will or codicil, revoke the trusts, powers and provisions hereinbefore declared concerning any part or parts of the wife's trust fund, not exceeding together the following shares or share thereof, that is to say: If there should be but one child and no more of the now intended marriage who being a son attains the age of twenty-one years, or being a daughter attains that age or marries, not exceeding two-third shares thereof, And if there should be two or more such children, not exceeding one half thereof; And may appoint that the part or parts to which such revocation extends shall, after her death, be held upon such trusts and subject to such powers and provisions and generally in such manner for the benefit of any husband who may survive her or any child or other issue or any one or more exclusively of the children or other issue of such subsequent marriage, including powers of advancement in favour of any issue, similar to the power hereinbefore contained in favour of issue of the now intended marriage, as [*wife*] may think proper, but so that any husband who may survive her shall not take more than a life interest, and that in default of any person becoming entitled under any revocation and appointment under this present power, and subject to the interests appointed thereunder, the part or parts of the wife's trust fund to which any such revocation and appointment relates shall devolve under these presents in the same manner as if no revocation or appointment had been made under this present power:

PROVIDED ALSO, that under an exercise of the power aforesaid any child (*a*) of [*wife*] shall not, except by way

(*a*) This power cannot be extended to other issue on the ground of remoteness. Moreover a share appointed to other issue dying under age would not necessarily fall to the husband or wife as next-of-kin.

of advancement, become entitled to any share of the wife's trust fund unless being a son he attains the age of twenty-one years, or being a daughter she attains that age or marries:

PROVIDED ALSO that an only child or any two or more children and any issue of a child or children collectively of [*wife*] by a subsequent marriage shall not under an exercise of the said power become entitled to a larger share of the wife's trust fund than such only child or such children collectively would have taken in case the wife's trust fund had been equally divided between all the children of [*wife*] by every marriage who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry:

PROVIDED ALSO that the power last aforesaid may be exercised so often as [*wife*] shall marry, so that the total amount ultimately appointed under all revocations and appointments made pursuant thereto shall not exceed, according to the event, the shares or share hereinbefore specified of the wife's trust fund.

No. 34.

Covenant by husband to keep up policy on his life, and provisions relating thereto and to substituted policy.

AND [*husband*] hereby covenants with the trustees that if the said intended marriage should be solemnised he will not by any act or omission cause or allow the policy hereby assigned, or any policy substituted therefor as hereinafter provided, to become void or voidable, and will during his life, from time to time, duly pay all money payable for keeping on foot the said policy, or any policy substituted as aforesaid, or for restoring the same respectively if and when voidable; and if any such policy should become void will effect on his life a new substituted policy or policies, with such office and in such names or name as the trustees or trustee shall direct, and for an amount equal to the sum which would have been payable under the void policy if it had not become void and [*husband*] had then died, and will deliver, and if necessary will also assign, every such substituted policy, and deliver the receipt for every such payment to the trustees or trustee, and will not do or suffer any act or

SETTLEMENTS. No. 34.

thing by means whereof the trustees or trustee may be prevented from receiving any money assured by any policy, whether original or substituted, subject to the trusts of these presents:

Power for trustees to keep up or restore policy or effect new policy.

AND IT IS hereby agreed that the trustees or trustee may at any time, in their or his absolute discretion, apply any income of the trust funds hereinbefore settled, or if income be insufficient, then any capital, in making any payments proper for keeping on foot or restoring any subsisting policy, or for effecting, keeping on foot, or restoring any substituted policy [but so that as between the husband's trust fund and the wife's trust fund the said payments shall be made out of the husband's trust fund in priority to the wife's trust fund (*a*)]: And every policy so effected, and the money payable thereunder, shall be held and applied upon the trusts and subject to the powers and provisions hereinbefore declared concerning the policy hereby assigned, and the moneys payable thereunder:

Limitation of liabilities of trustees.

AND IT IS hereby agreed that it shall not be obligatory on the trustees or trustee to enforce any covenant hereinbefore contained in reference to any policy, whether original or substituted, or to apply any income or capital in making payments for keeping on foot or restoring any such policy, or for effecting or keeping on foot or restoring any substituted policy, unless when required so to do in any specific case by writing signed by some person, or the guardian of some person, beneficially interested in the premises: And unless also due provision be made to the satisfaction of the trustees or trustee for payment of the costs of any proceedings required to be taken, and any omission or neglect by the trustees or trustee in any of the matters aforesaid (except when required and upon due provision made as aforesaid) shall not constitute a breach of trust, and the trustees or trustee shall not be responsible on account of any policy becoming void

(*a*) Omit these words in brackets if there is only one trust fund settled.

through any means except their or his own omission or neglect when so required, and upon due provision made as aforesaid.

No. 35.

Agreement to settle other property of wife.

AND IT IS HEREBY AGREED, and each of them [*husband*] and [*wife*] hereby covenants with the trustees hereinbefore named that if, besides the trust funds hereinbefore assigned [*or* settled] by [*wife*] she now is, or if at any time or times during the said intended coverture she or [*husband*] in her right should become entitled in any manner and for any estate or interest to any real or personal property of the value of £ or upwards at one time and from one and the same source (except jewels, trinkets, ornaments, furniture, plate, china, glass, pictures, prints, books, and other chattels passing by delivery, which, and also any property excepted from this covenant as being not of the value of £ , it is hereby agreed shall belong to [*wife*] for her separate use), Then and in every such case [*husband*] and [*wife*], and all other necessary parties shall at the cost of the trust estate, as soon as may be, and to the satisfaction of the trustees or trustee, convey such real or personal property to the trustees or trustee upon trust to sell or call in or convert into money such part or parts thereof as shall not consist of money or of an annuity or other real or personal property limited to or held in trust for [*wife*] for her life only or for a term of years determinable on her death, but with power for the trustees or trustee to postpone such sale, calling in, and conversion so long as they or he may think fit, and to retain investments transferred under this covenant and dispose of the annual income thereof in like manner as the annual income of the wife's trust fund, and so that any reversionary interest be not sold before it falls into possession unless the trustees or trustee see special reason for sale:

AND IT IS HEREBY AGREED that the trustees or trustee shall stand possessed of the money to arise from such sale, calling in, or conversion, and of any part of the said

SETTLEMENTS. No. 35.

property received in money Upon the trusts and subject to the powers and provisions hereinbefore declared concerning money forming part of the wife's trust fund, or as near thereto as circumstances will permit, and upon trust to pay any annuity or the income of any other real or personal property limited to or held in trust for [*wife*] for her life only or for any term of years determinable on her death to her for her separate use independently of any husband and without power of anticipation, but with power for the trustees or trustee with her consent in writing at any time to sell the same, so that the money to arise from such sale be held and applied upon the trusts and subject to the powers and provisions hereinbefore declared concerning money forming part of the wife's trust fund, or as near thereto as circumstances will permit:

Exoneration of trustees.

PROVIDED ALWAYS that the trustees or trustee shall not be made accountable in respect of any real or personal property becoming subject to the covenant to settle lastly hereinbefore contained unless and until the same shall have been actually paid, conveyed, assigned or transferred to them or him, nor shall they or he be chargeable with breach of trust or made liable in any way for not taking any proceedings to get in the same real or personal property or any part thereof unless and until required in writing so to do by some person beneficially interested under these presents.

[*Add power to lease, Form No.* 38, *post, and see note* (*a*), *p.* 174.]

No. 36.

Power to invest in the purchase of land.

AND IT IS HEREBY AGREED that the trustees or trustee may during the lives of [*husband*] and [*wife*], and the life of the survivor of them, with their, his, or her consent in writing instead of laying out all or any money held on the trusts of these presents in the investments hereinbefore authorized, invest the same money in the purchase of any messuages, lands or hereditaments in England or Wales, being either freehold, customary freehold, or copyhold of inheritance, or leasehold for

any term of years whereof not less than sixty years is unexpired at the time of purchase, And the hereditaments so purchased shall be conveyed, surrendered or assigned to and vested in the trustees or trustee Upon trust, with the consent in writing of [*husband*] and [*wife*], or the survivor of them, during their, his, or her lifetime, and after the death of both at the discretion of the said trustees or trustee to sell the same hereditaments or any part thereof;

AND the trustees or trustee shall stand possessed of the net money to arise from any such sale (after payment of the costs incidental thereto) Upon the trusts and subject to the powers and provisions (including this present power of purchasing hereditaments) upon and subject to which the money laid out under this present power would then have been held if the same had not been so laid out and in the meantime until sale the purchased hereditaments are to be considered as money. [*Add power to lease, Form No.* 38, *and see note* (*a*), *p.* 174.]

No. 37.

Power to invest in the purchase of a residence.

AND IT IS HEREBY AGREED that at any time during the joint lives and upon the joint request in writing of [*husband*] and [*wife*] the trustees or trustee shall, and they and he are hereby required to raise out of the husband's trust fund or the wife's trust fund, or partly out of each, any sum not exceeding £ , and invest the sum so raised in the purchase and in paying the expenses of the purchase of a dwelling-house with or without garden-ground or other land, or any usual appurtenances, as a residence for [*husband*] and [*wife*], such messuage and hereditaments to be either freehold, customary freehold, or copyhold of inheritance, or leasehold for any term of years whereof not less than sixty years is unexpired at the time of purchase, And the hereditaments so purchased shall be conveyed, surrendered, or assigned to and vested in the trustees or trustee Upon trust at the request in writing of [*husband*] and [*wife*] or the survivor of them during their his or her lifetime, and after the death of both at the discretion of

SETTLEMENTS. No. 37.

the trustees or trustee to sell the same hereditaments or any part thereof:

AND, &c. (*Here continue as in last Form, and add at the end the following provision*):

AND IT IS HEREBY AGREED that until such sale as aforesaid the trustees or trustee shall permit [*husband*] and [*wife*] and the survivor of them to occupy the messuage, land and hereditaments so purchased [*add power of leasing, Form No.* 38 (*a*)].

No. 38.

Power of leasing for twenty-one years hereditaments purchased.

AND IT IS HEREBY AGREED that the trustees or trustee may with the consent in writing of [*husband*] and [*wife*], or the survivor of them during their, his, or her lifetime, and after the death of both at the discretion of the trustees or trustee, lease any messuages, lands, or hereditaments subject to the trusts of these presents for any term not exceeding twenty-one years at the best rent to be reasonably obtained, without taking a fine, and subject to such special covenants and provisions as may be deemed proper, and the rents received shall be paid or applied in like manner as the income of investments representing the purchase-money would be payable or applicable if a sale had been made and the proceeds had been invested under the trusts of these presents.

No. 39.

Power to concur in partition.

AND (*b*) IT IS HEREBY AGREED that the trustees or trustee may with the consent in writing of [*husband*] and [*wife*], or the survivor of them during their his or her life, and after the death of both at the discretion of the trustees or trustee, concur with any other person for the time being entitled to dispose of any undivided share or shares of any lands or hereditaments mentioned in the [2nd] Schedule hereto, in making or in allowing or con-

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(*a*) If Forms Nos. 35, 36, and 37, or any two of them, are used in the same settlement, it will be sufficient to use No. 38 once only, and it should come after the last used.

(*b*) This form is applicable to a settlement of a share of the proceeds of the sale of hereditaments directed to be sold but remaining unsold, *see* PRECED. XXXI., *post*.

senting to making a partition of the same hereditaments or any of them, and to give or receive any money for equality of partition, and may make any such partition upon any terms or conditions, and in any manner they or he shall think fit, and may execute and do all assurances and things which they or he think expedient for the purpose of effecting such partition or any arrangement relating thereto, and may accept any hereditaments under a partition instead of the share hereby assigned of proceeds of sale of hereditaments, and the hereditaments so accepted shall be conveyed to and vested in the trustees or trustee upon and subject to like trusts, powers, and provisions as are by these presents declared and capable of taking effect concerning any hereditaments purchased out of the wife's trust fund (*a*) under the power in that behalf hereinbefore contained.

No. 39.

No. 40.

Power to deposit money in bank.

AND IT IS HEREBY AGREED that the trustees or trustee may, pending the negociation and preparation of any security hereby authorized, or during any other time while an investment of the nature aforesaid is being sought for, deposit any money, subject to the trusts of these presents, at any joint-stock or other bank, either at interest or otherwise, as may be deemed expedient, all which interest (if any) and all bonuses and other periodical payments in the nature of income accruing from or payable in respect of any of the trust premises shall, for the purposes of these presents, be deemed annual income, and be applicable accordingly.

No. 41.

Power to make contributory loans.

AND FURTHER that the trustees or trustee may lend money on any security, along with money lent by any other person, and by way of contributory loan, and may accept the security in the names or name of the trustees, or one of them, together with other names or another

(*a*) That is, assuming that the share assigned by the settlement belonged to the wife.

SETTLEMENTS. No. 41.

name, or may permit the same to be taken exclusively in the names of other persons, as may be deemed expedient.

No. 42. Loan may be for a term.

AND FURTHER that the trustees or trustee may contract that money invested on any security shall not be called in during any specified period.

No. 43. Power to trustees to value and apportion mixed funds.

PROVIDED ALWAYS, that in the execution of any of the aforesaid trusts or powers the trustees or trustee may decide what money represents income and what represents capital, and may allot or apportion any moneys or investments, the trusts whereof are hereby declared, to or between the persons entitled thereto in such manner and may set apart such investments to answer any annual sum payable to any person as the trustees or trustee shall deem just and reasonable according to the respective rights and interests of those persons, and notwithstanding that trust funds held on different trusts have been blended, and for the purposes aforesaid may ascertain and fix the value of the respective parts of the said investments, and every such decision, allotment, apportionment, setting apart, and valuation, shall be as binding upon all persons then or thereafter to be interested in the premises as if the same had been duly made by a Court of competent jurisdiction.

No. 44. Power to trustees to deposit securities to bearer for safe custody.

AND IT IS HEREBY AGREED that securities to bearer taken as an investment may be deposited by the trustees or trustee for safe custody in their or his names or name with any banker, or banking company, or with any company whose business it is to take charge of securities of that nature, and the trustees or trustee shall not be responsible for any loss incurred in consequence of such deposit, and may pay out of the income of the trust premises any sum required to be paid on account of such deposit and for safe custody, and such deposit shall be a sufficient compliance with the power to invest hereinbefore contained notwithstanding the direction that investments shall be made in their or his names or name.

No. 45.

Solicitor trustee to be paid his costs.

AND IT IS HEREBY AGREED that the said and every other person to be hereafter appointed a trustee of these presents who may be a solicitor and professionally employed in matters relating to the trusts of these presents shall be entitled and is hereby authorized to retain and receive out of the trust premises his usual professional costs and charges, as well by way of remuneration for business transacted by him or his partner or partners personally, or by his or their clerks or agents (including all business of whatever kind not strictly professional, but which might have been performed or would necessarily have been performed in person by a trustee not being a solicitor (*a*)), as costs and charges out of pocket in the same manner as if the said and every other such person as aforesaid had not been a trustee or trustees hereof, but had been employed and retained by the trustees hereof as solicitor in the matter of the trusts.

No. 46.

Power to appoint new trustees.

AND IT IS HEREBY AGREED that [*husband*] and [*wife*] during their joint lives, and the survivor of them during his or her life, shall have power to appoint new trustees of these presents.

(*a*) As to the necessity for these words, see *Harbin* v. *Darby*, 28 Beav. 325.

SECT. IV.

FORMS IN WILLS.

WILLS.

No. 47.

Commencement of will.

I. , of , hereby revoke all testamentary dispositions heretofore made by me, and declare this to be my last will, which I make this day of 18 (*a*).

No. 48.

Commencement of codicil.

I of declare this to be a first [*or* second, &c.] codicil, which I make this day of 18 , to my will which is dated the day of 18 .

End of codicil.

And subject as aforesaid I confirm my said will.

No. 49.

Appointment of trustees and executors.

I APPOINT X. of &c., Y. of &c., and Z. of &c. to be the executors and trustees of my will, and they or the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being hereof are hereinafter called the trustees or trustee,

Legacies to trustees and executors.

AND I BEQUEATH to each of them, if he shall accept the office of trustee and executor, the sum of £ .

No. 50.

Appointment of guardians.

I APPOINT my wife , and after her death the trustees or trustee, guardian and guardians of my infant children.

No. 51.

Confirmation of testator's marriage settlement.

I CONFIRM the settlement made in contemplation of my marriage with my wife, and declare that the provisions hereby made for her and my children shall be in addition to and not in satisfaction of those made or covenanted to be made for them by settlement.

No. 52.

Bequest to wife of furniture, &c.

I BEQUEATH to my wife absolutely all the plate, linen, china, glass, books, pictures, prints, furniture, and articles of household use or ornament, wines, liquors, and con-

(*a*) It is very convenient to have the date at the beginning of the will.

sumable stores, and other articles and effects of every kind which at my death shall be in or about my dwelling-house, except money or securities for money: And I also bequeath to her the sum of £ , to be paid to her immediately after my death. No. 52. And legacy.

I BEQUEATH the following charitable legacies, for which the receipts of the treasurers of the respective societies hereinafter named shall be sufficient discharges (that is to say), To the Society £ ; To &c.; all which charitable legacies I direct to be paid exclusively out of that part of my personal estate which by law is applicable for charitable purposes, and in priority to all other payments thereout; and I direct that my debts, funeral and testamentary expenses, and other legacies, shall be primarily charged upon and payable out of my other personal estate not applicable by law for charitable purposes. No. 53. Bequest of charitable legacies.

I BEQUEATH to each of my indoor and outdoor servants, not in receipt of daily or weekly wages, who shall be in my service at my death, and shall have been in such service for twelve calendar months immediately preceding, one year's wages in addition to wages then due. No. 54. Legacies to servants.

I BEQUEATH the several annuities following, that is to say, To my housekeeper A. B., whether in my service or not at my death, an annuity of £ during her life; To my butler C. D., if he shall be in my service at my death, an annuity of £ during his life; To &c., &c. And I direct that all the said annuities to females shall be for their separate use independently of any husband and without power of anticipation, and that each annuity shall commence from the day of my death and shall accrue due from day to day, but shall be paid by equal quarterly payments, the first of such payments to be made at the end of three calendar months from my death. I empower the trustees or trustee to provide for payment of any annuity before bequeathed either by purchasing a Government annuity to answer or by setting apart as an No. 55. Annuities to servants.

WILLS. No. 55.

annuity fund such investments as the trustees or trustee think proper to answer the same, and any annuity so provided for shall no longer be a charge upon the residue of my estate, but shall be solely charged on the Government annuity or investments so purchased or set apart, and my personal estate or the proceeds thereof may be distributed accordingly discharged therefrom: And upon the cesser of any annuity the annuity fund (if formed), or so much (if any) thereof as the trustees or trustee do not think it necessary to retain to answer any remaining annuity shall fall into and form part of my residuary estate.

No. 56.

Bequest of annuity.

I BEQUEATH to an annuity of £ for her life, for her separate use, and without power of anticipation during any coverture, to commence from my death and to be considered as accruing from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the end of six calendar months after my death: And I direct the trustees or trustee to set apart as soon as conveniently may be, and invest in their or his names or name in any of the investments in which my residuary estate is authorized to be invested, a sum the income whereof when invested shall be sufficient at the time of investment to pay the said annuity, and to pay the same accordingly, with power to resort to the capital of the appropriated fund whenever the income shall be insufficient: And until such sum shall be so appropriated, I charge my residuary estate with the said annuity: And subject to the payment of the said annuity, the appropriated fund, or so much thereof as shall not be resorted to to make up deficiency of income, shall fall into and form part of my residuary estate.

No. 57.

Gifts of legacies.

I BEQUEATH the following legacies to the following persons; namely, to the sum of £ , &c., &c. And in case any woman to whom a legacy is hereinbefore bequeathed should be under coverture at my

death then I direct that the trustees or trustee may at their or his absolute discretion either pay the whole or any part of her legacy to such person or persons and in such manner generally as she shall by any writing under her hand direct, or if the trustees or trustee shall think it more for her interest, may pay the whole or any part of such legacy to the trustees or trustee for the time being of any settlement made on or subsequently to her marriage, to be by them or him held upon the trusts by that settlement declared concerning the trust funds, or any specified portion which my trustees or trustee may select of the trust funds comprised therein; Or my trustees or trustee may retain all or any part of the legacy of such woman under coverture and invest the same in any investments hereinafter authorized, and vary investments, and stand possessed of such investments upon trust as to the annual income thereof to pay the same to such woman for her separate use during her life independently of any husband and without power of anticipation, and after her death (as to the capital and income) In trust for all or any one or more exclusively of the others or other of the issue of the same woman [*continue usual trusts for issue as she shall appoint, and in default for children equally, with hotchpot and advancement clauses, adapting Forms Nos.* 64 *and* 65]:

Option to pay to married woman or to her trustees.

AND if no child of the same woman obtains a vested interest under the trust in default of appointment hereinbefore contained, then the capital of the investments representing her legacy shall be held In trust for such person or persons as she shall while not under coverture by deed, or as she shall notwithstanding coverture by will or codicil appoint, and in default of and subject to any such appointment In trust for the person or persons who would under the statutes for the distribution of the effects of intestates have become entitled thereto at her death in case she had died possessed thereof intestate and without having been married, such persons, if more than one, to take as tenants in common in the same

If no child of the married woman attains a vested interest, capital of legacy to go as she shall appoint, in defaults, to her next of kin.

WILLS. No. 57.

shares in which they would have taken under those statutes:

[*Add and adapt power to appoint life interest to a husband surviving, Form No.* 70.]

Power to appoint separate trustees for any legacy.

I EMPOWER my trustees or trustee to appoint a separate set of trustees for the legacy of any woman under the bequests aforesaid, and to pay or transfer her legacy to the separate set of trustees so appointed thereof and upon the trusts affecting the same, and thenceforth she shall during her life have power to appoint new trustees thereof.

No. 58.

Bequest to A. for life with remainder to his issue *per stirpes*.

I BEQUEATH to the trustees hereinbefore named the sum of £ upon trust, with the consent of A. of &c., during his life, and after his death at the discretion of the trustees or trustee, to invest the same in the names or name of the trustees or trustee in any of the investments in which my residuary estate is authorized to be invested, and to vary investments: And until investment the said sum is to carry interest at the rate of four per cent. per annum from my death, payable out of my residuary estate: And I direct the trustees or trustee to stand possessed of the said sum, or investments and the annual income thereof

Income to A. for life.

UPON TRUST to pay the said income to A. during his life and after his death (as to capital and income)

Capital after his death to his issue *per stirpes*.

IN TRUST in equal shares for all or any of the children of A. living at the time of his death, who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry, and for all or any of the issue living at that time who being males or a male attain the age of twenty-one years, or being females or a female attain that age or marry, of any child of A. who dies in his lifetime leaving issue living at the time of his death, and so that such issue shall take through all degrees according to their stocks and in equal shares the share or shares which their parent

would have taken if living at the time aforesaid, and so that no issue shall take whose parent is living at the time aforesaid, and so capable of taking. [*Add power of advancement after the death of A. or in his lifetime with his consent in writing, adapting Form No.* 65, *post.*] No. 58.

AND if no child or other issue of A. lives to attain a vested interest under the trusts hereinbefore contained, then subject to the trusts hereinbefore declared in favour of A. and his issue, I direct that the said sum of £ , or the investments representing the same, and the income thereof, and all statutory accumulations, if any, of income, or so much thereof respectively as shall not have been applied under any power hereinbefore contained or any statutory power, shall fall into and form part of my residuary estate. No. 59. In default of issue fund to fall into residue.

I DIRECT all the legacies and the annuity [*or* annuities] hereinbefore bequeathed to be paid free of legacy duty. No. 60. Legacies and annuity to be free of duty.

I DEVISE AND BEQUEATH all the real and personal estate to which at my death I shall be beneficially entitled, or of which I shall have power to dispose beneficially by will for any purpose I may think proper [and not hereby otherwise disposed of (*a*)] unto the trustees hereinbefore named absolutely Upon trust to sell (*b*) the said real estate (including chattels real), and call in, sell, and convert into money such part of my personal estate as shall not consist of money, with power to postpone such sale and conversion for such a period as the trustees or trustee may think proper, No. 61. General devise and bequest in trust for sale.

And I direct that the income of my personal estate, however invested, shall from my death be treated as income, and no part thereof is to be added to capital,

And that until a sale of the said real estate the trustees or trustee may lease the same for any term not exceeding twenty-one years at the best rent to be reasonably Power to lease real estate until sale.

(*a*) Omit these words if there is no specific devise or bequest.

(*b*) See p. 159 (*a*), *ante*.

WILLS. No. 61.

obtained without taking a fine, And that the rents and profits thereof, or of so much thereof as for the time being remains unsold, shall after payment thereout of all rates, taxes, costs of insurance and repairs and other outgoings, be paid or applied to the persons or in the manner to whom or in which the income of the produce thereof is hereinafter directed to be paid and applied,

Trusts of proceeds of sale.

AND I direct the trustees or trustee out of the money to arise from the sale and conversion of my said real and personal estate and out of my ready money to pay my funeral and testamentary expenses and debts and the legacies bequeathed hereby or by any codicil hereto, and to stand possessed of the residue of the said money

Investment.

Upon trust to invest the same in their or his names or name In or upon [*add investments from Form No.* 18].

With power for the trustees or trustee at discretion to change such investments for others of a like nature,

No. 62.

Trusts of investments.

AND I DECLARE that the trustees or trustee shall stand possessed of the said investments hereinbefore directed to be made or authorized to be retained (hereinafter called the trust fund), and of the annual income thereof, upon the trusts following, that is to say :—

No. 63.

Income to wife during widowhood [*or* during life for separate use.]

UPON TRUST to pay the said income to my wife during her widowhood [*or* during her life, for her separate use, independently of any husband and without power of anticipation]

And after her death or second marriage, which shall first happen [*or* after her death], then as to the capital and income of the trust fund

No. 64.

Trust for issue as wife shall appoint; in default for children.

IN TRUST for all or any one or more, exclusively of the others or other of my issue, whether children or remoter descendants (*a*), at such time, and if more than

(*a*) It is not necessary expressly to restrict this power within the limits allowed by the rules against perpetuity: *Routledge* v. *Dorril*, 2 Ves. Jr. 356; *Attenborough* v. *Attenborough*, 1 K. & J. 296; but in any appointment made under it regard must be had to those limits as from the death of the testator.

one in such shares, and with such gifts over, and generally in such manner, for the benefit of such issue or some or one of them, as my wife shall, whether covert or sole, by deed revocable or irrevocable, or by will or codicil appoint; and in default of and until and subject to any such appointment, IN TRUST for all or any my children or child who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry, and if more than one in equal shares,

No. 64.

Hotchpot clause.

AND I declare that any child who, or whose issue shall take any part of the trust fund under any appointment by my wife shall not, in the absence of any direction by her to the contrary, take any share in the unappointed part without bringing the share or shares appointed to him or her, or his or her issue into hotchpot, and accounting for the same accordingly.

No. 65.

Advancement clause.

I EMPOWER the trustees or trustee at any time and from time to time after the death or second marriage [*or* after the death (*a*)] of my wife, or during her widowhood [*or* her life (*a*)], with her consent in writing to raise any part or parts not exceeding together one-half of the presumptive or vested share of any child or other issue of mine under the trusts hereinbefore declared, and to pay or apply the same for the advancement or benefit of such issue, as the trustees or trustee think proper.

No. 66.

Settlement of daughters' shares.

I DIRECT that after the death or second marriage of my wife, which shall first happen [*or* after the death of my wife, *if she takes a life interest*], unless she shall in exercise of the power of appointment hereinbefore given to her expressly direct to the contrary, the trustees or trustee shall retain in their or his names or name, the share of each daughter of mine in the capital of my residuary estate under the trust aforesaid, with power after she attains the age of twenty-one years, and after the death or second marriage, [*or* after the death] of my

(*a*) The words in brackets to be used if the wife takes a life interest.

WILLS.
No. 66.

Income to be paid to each daughter for her life.

wife with the consent of such daughter during the residue of her life, but during her minority and also after her death at the discretion of the trustees or trustee from time to time to vary the investments thereof for others of a like nature; AND shall stand possessed of her share and the investments representing the same hereinafter included in the description of such daughter's share (subject to any advancement made for her benefit under the aforesaid power of advancement), UPON TRUST to pay the income thereof to such daughter for her life, for her separate use, independently of any husband and without power of anticipation:

AND after her death the capital and income of such daughter's share shall be held [*Here add usual trusts for issue as she shall appoint, and in default for children equally with hotchpot and advancement clauses, adapting Forms Nos.* 64 *and* 65].

No. 67.

Capital of daughter's share in default of her children to accrue to other children.

AND if there should not be any child of such daughter who under the trust in default of appointment hereinbefore contained attains a vested interest in her share, Then subject to the trusts and powers hereinbefore declared in favour of such daughter and her issue, her original share, and also any share or shares which shall have accrued under this provision, shall accrue to and be held IN TRUST for my other children or child who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry, and if more than one in equal shares, but so that the further share accruing to each daughter shall be retained and held by the trustees or trustee upon and subject to the like trusts and powers as are hereinbefore declared concerning the original share of that daughter, and so that the further share accruing to each child of mine shall be subject to the like power of advancement as his or her original share.

No. 68.

[*Where legacies are given to daughters instead of shares of the residue say, before the general devise and bequest, No.* 61.]

No. 68.

Bequest of legacies to daughters and settlement thereof.

I BEQUEATH the sum of £ to each of my daughters, AND I direct that the trustees or trustee shall retain the legacy bequeathed to each daughter of mine and invest the same in their or his names or name with her consent if of age, and if under age and also after her death at the discretion of the trustees or trustee in any of the investments in which my residuary estate is authorized to be invested, with power with the like consent or at the like discretion to vary the investments thereof for others of a like nature, AND shall stand possessed of each daughter's legacy and the investments representing the same hereinafter included in the description of such daughter's legacy (subject to any advancement which the trustees or trustee shall think proper to make and which I hereby authorize to be made for her benefit to any amount not exceeding one-half of each daughter's legacy) UPON TRUST [*trusts as to income for such daughter for her life, and after her death as to capital and income for her issue as she shall appoint, with hotchpot and advancement clauses, and in default for her children equally, as in the preceding form No.* 66.]

No. 69.

In default of children, each daughter's legacy to fall into residue.

AND if there should not be any child of a daughter who under the trust in default of appointment hereinbefore contained attains a vested interest in her legacy, Then subject to the trusts and powers hereinbefore declared in favour of such daughter and her issue, her legacy and the income thereof and all statutory accumulations, if any, of income, or so much thereof respectively as shall not have been applied under any of the powers hereinbefore contained or any statutory power, shall fall into and form part of my residuary estate.

No. 70.

Power to daughters to appoint life interests to surviving husbands.

I DECLARE that it shall be lawful for each daughter of mine, notwithstanding coverture, from time to time or at any time by deed revocable or irrevocable, or by will or codicil, to appoint to or for the benefit of any husband who may survive her during the residue of his life or any less period, all or any part of the annual income of her share,

WILLS. No. 70.

as well original as accruing under the trusts aforesaid [*or* of the legacy hereinbefore bequeathed to her], And that upon any such appointment the trusts and powers hereinbefore limited to take effect after the death of the daughter so appointing, shall take effect only after the determination of and in the meantime subject to the interest limited by any such appointment.

No. 71.

Declaration that sum paid or settled be taken as part of legacy.

I DECLARE that any sum which on the marriage of any daughter of mine shall be paid to her, or settled by me on such marriage, shall be taken as being so paid or settled in or towards satisfaction of her share in my residuary estate [*or* the legacy hereinbefore bequeathed to her].

No. 72.

Attestation clause to will or codicil.

In witness whereof I have hereunto set my hand the day and year first above written (*a*).

[*Testator's signature.*]

Signed and declared by the above named as [a codicil to] his last will in the presence of us both present at the same time, who in his presence and the presence of each other have hereunto set our hands as witnesses.

[*Two witnesses, adding addresses, and descriptions if any* (*b*).]

(*a*) The date is at the beginning.

(*b*) The addresses and descriptions of the witnesses are not necessary, but are convenient for identification.

CHAPTER IV.

PRECEDENTS.

SECT. I.

PURCHASE DEEDS.

PURCHASE DEEDS.

No. I.

C. A. s. 7 (1), A. & F.

MORTGAGEES OR TRUSTEES AND BENEFICIAL OWNER.

CONVEYANCE BY MORTGAGEES OR TRUSTEES AND BENEFICIAL OWNER under C. A. s. 7 (1) A. and F. (*Witnessing part.*)

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of &c., A. and B. AS MORTGAGEES [*or* TRUSTEES] and according to their estate and by the direction of X. hereby convey, and X. as BENEFICIAL OWNER hereby conveys and confirms unto, &c. [See C. A. Schedule 4, Form III.]

This form implies a several covenant by the mortgagees or trustees, that they have not incumbered or done any act to prevent them from conveying, &c., C. A. s. 7 (1) F. This being a covenant by "every person," the word "person" does not admit of being read in the plural, and the covenant is, moreover, expressly confined to the person's own acts. So that making two persons jointly convey "as mortgagees" or "as trustees" has not, as in other cases, the effect of a joint covenant.

Covenant F not joint.

The form also implies a covenant for title by X. that notwithstanding anything by him, or any one through whom he derives title otherwise than by purchase for value, &c., he with the concurrence of the mortgagees or trustees can convey, &c. (s. 7 (1) A).

A mortgagee or trustee, except where he is selling, conveys by reference to his mortgage or trust deed. If he conveys by substantive description it is usual to add the words "according to his estate."

Mortgagee or trustee conveys only according to his estate.

"Convey" is used in this and some other forms, but it is not a necessary word.

No. II.

C. A. s. 7 (2), (6).

TRUSTEES AND TENANT FOR LIFE.

CONVEYANCE by TRUSTEES of the power of sale and exchange in a settlement by the direction of the TENANT FOR LIFE under C. A., s. 7 (2) with a variation under subs. 7. (*Witnessing part.*)

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of &c., and

PURCHASE DEEDS. No. II.

in exercise of the power given by the hereinbefore recited indenture of &c., A. and B. AS TRUSTEES, and by the direction of X. AS BENEFICIAL OWNER, do hereby revoke all the limitations now subsisting under the said recited indenture concerning the lands and hereditaments hereinafter mentioned, and do hereby appoint and convey All &c., To the use &c.

Under C. A. s. 7, A. and subs. (2) this form implies a covenant by X. that notwithstanding anything by him, or any one through whom &c. (which includes the settlor) he has, with the concurrence of the trustees, power to convey &c. If it is desired to restrict the covenant of X. to his own life estate add the following proviso (see Dart, p. 548, 5th ed.):—

Proviso restricting the covenant by tenant for life.

PROVIDED ALWAYS, that so far as regards the reversion or remainder expectant on the life estate of X. in the said hereditaments intended to be hereby conveyed, and the title to and further assurance of the same hereditaments after his death, the covenants by him in these presents implied by statute shall not extend to the acts or defaults of any person other than and besides himself and his own heirs and persons claiming or to claim under or in trust for him, them, or any of them. In witness, &c.

No. III.

C. A. s. 7 (3). HUSBAND AND WIFE (WIFE BENEFICIAL OWNER).

CONVEYANCES BY HUSBAND AND WIFE under C. A. s. 7 (3). (*Witnessing part.*)

1. NOW THIS INDENTURE WITNESSETH that in pursuance &c., A. S., AS BENEFICIAL OWNER, with the consent of B. S. her husband, hereby conveys and disposes of [*or* appoints] unto &c.

This form implies a covenant for title on the part of the wife only, but no covenant on the part of the husband. Conveyance includes appointment, and "convey" includes "appoint."

No. IV.

HUSBAND AND WIFE (BOTH BENEFICIAL OWNERS.)

2. NOW THIS INDENTURE WITNESSETH &c., that A. S. AS BENEFICIAL OWNER, with the concurrence of B. S. her husband, hereby conveys and disposes of, and B. S. AS BENEFICIAL OWNER hereby conveys and confirms unto &c.

PURCHASE DEEDS.

This form implies a covenant for title on the part of the wife that notwithstanding any thing by her &c., she has &c., and also a covenant for title by the husband that notwithstanding any thing by him &c., he has &c., and also a covenant by him in the same terms as the implied covenant of the wife, namely, "That notwithstanding any thing by her &c., she has" &c.

This form is applicable to the ordinary case of a conveyance by husband and wife of the wife's freeholds not settled to her separate use, and the deed must be acknowledged by her under 3 & 4 Will. 4, c. 74, ss. 77, 79.

CONVEYANCE BY TENANTS IN COMMON. (*Witnessing part.*) No. V.

TENANTS IN COMMON. Several covenant as to each moiety.

1. NOW THIS INDENTURE WITNESSETH that in consideration of &c., A. as to the one undivided moiety to which he is entitled and as BENEFICIAL OWNER, and B. as to the other undivided moiety to which he is entitled and AS BENEFICIAL OWNER, hereby conveys unto &c.

This form implies covenants by A. and B. severally each as to *his own moiety*.

No. VI.

Several covenant as to recited shares.

2. NOW THIS INDENTURE WITNESSETH that in consideration of &c., each of them, A., B., C., &c., as to the undivided share to which he is entitled as hereinbefore recited, and AS BENEFICIAL OWNER, hereby conveys &c.

This implies a several covenant by each *as to his share* shewn by recital.

CONVEYANCE BY JOINT TENANTS. (*Witnessing part.*) No. VII.

JOINT TENANTS. Several covenant as to entirety.

1. NOW THIS INDENTURE WITNESSETH that in consideration, &c., A. AS BENEFICIAL OWNER, and also B. AS BENEFICIAL OWNER, hereby convey unto &c.

This form implies covenants by A. and B. severally each as *to the entirety*. As to when a purchaser is entitled to joint and several covenants, see note to Precedent X.

PURCHASE DEEDS.

No. VIII.

Several covenant as to entirety.

2. NOW THIS INDENTURE WITNESSETH &c., that each of them, A., B., and C., as to his own undivided share to which he is entitled as hereinbefore recited, and AS BENEFICIAL OWNER, and also by the direction of each of the others of them directing AS BENEFICIAL OWNER, hereby conveys unto &c.

This implies a several covenant by each as to the shares of the others as well as his own: C. A. s. 7 (2); and gives in another form a several covenant as to the entirety.

No. IX.

Joint covenant as to entirety.

3. NOW THIS INDENTURE WITNESSETH that in consideration of &c., A. and B., AS BENEFICIAL OWNERS do hereby convey.

This implies a joint covenant by A. and B. as to the entirety that notwithstanding anything by them &c., they have full power &c.

No. X.

Joint and several covenant.

4. NOW THIS INDENTURE WITNESSETH that in consideration of &c. A. and B. AS BENEFICIAL OWNERS do and also each of them AS BENEFICIAL OWNER and by the direction of the other of them DIRECTING AS BENEFICIAL OWNER doth hereby convey unto &c.

This implies a joint covenant by A. and B. as to the entirety that notwithstanding anything by them &c., they have full power to convey &c., and also a several covenant by each that notwithstanding anything by him &c., he with the concurrence of the other has full power to convey &c.

Where the sale is made without any special agreement as to covenants it is conceived that the purchaser is entitled to the joint and several covenants by all tenants in common as to the entirety.

No. XI.

TENANT FOR LIFE AND REMAINDERMAN.

CONVEYANCE BY TENANT FOR LIFE AND REMAINDERMAN. (*Witnessing part.*)

NOW THIS INDENTURE WITNESSETH that in consideration of &c., each of them A. and B. AS BENEFICIAL

OWNER, and by the direction of the other of them DIRECTING AS BENEFICIAL OWNER, hereby conveys unto &c.

PURCHASE DEEDS. No. XI.

In this form a several covenant is implied by each as to the entire fee that notwithstanding anything by him &c., he with the concurrence of the other has full power to convey &c.

The covenant of each of them severally may if desired be restricted to his own estate, so far as regards the tenant for life by a proviso similar to that in the Precedent, No. II., and so far as regards the remainderman by the following proviso—

PROVIDED ALWAYS, that so far as regards the life estate of A. [*tenant for life*] in the said hereditaments intended to be hereby conveyed, and the title to and further assurance of the same hereditaments during his life the covenant by B. [*remainderman*] in these presents implied by statute shall not extend to the acts, deeds, or defaults of any person other than and besides B. and his own heirs and persons claiming or to claim under or in trust for him, them, or any of them.

Proviso restricting the covenants of the remainderman.

For an ordinary CONVEYANCE of FREEHOLDS BY MORTGAGOR AND MORTGAGEE, see C. A. 4th Sched. Form III., and Preced. I., *ante*.

FREEHOLDS.

CONVEYANCE of FREEHOLDS by the EXECUTOR of the SURVIVOR of DECEASED MORTGAGEES under the power of sale conferred by the C. A.

No. XII. FREEHOLDS.

THIS INDENTURE made &c. 1883, Between X. of &c. [*vendor*] of the first part and B. of &c. [*purchaser*] of the other part.

Parties.

WHEREAS by an Indenture dated &c. 1882, and made between A. of the one part and M. and N. (both since deceased) of the other part, the hereditaments hereinafter mentioned were conveyed by A. as beneficial owner to the use of M. and N. in fee simple by way of mortgage for securing payment by A. to M. and N. of £1000

Recital. Mortgage.

PURCHASE DEEDS. No. XII.

advanced by them on a joint account to A. with interest on the day therein mentioned and since passed:

Death of mortgagees and will of survivor.

AND whereas M. died on &c. 1882, and N. died on &c. 1883, having by his will dated &c. appointed the said X. his sole executor who proved the same in the Principal Probate Registry on &c.

That principal and interest due.

AND whereas the said sum of £1000 and an arrear of interest thereon are still due to the said X. as such executor as aforesaid upon the hereinbefore recited indenture:

Testatum. Conveyance.

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £2000 paid to X. by B. for the purchase of the fee simple of the hereditaments hereinafter mentioned, the receipt of which sum X. hereby acknowledges, X. AS THE PERSONAL REPRESENTATIVE of N. deceased, hereby in exercise of the power of sale conferred by the Conveyancing and Law of Property Act, 1881, conveys and releases unto B. All that &c.

Parcels.

Habendum.

TO HOLD unto and to the use of B. in fee simple discharged from all money secured by and all claims under the said recited indenture.

In witness &c.

The mortgage estate devolves upon the executor of the last surviving mortgagee under C. A. s. 30, with the right to exercise the power of sale, which is by s. 19 made incident to the estate of mortgagees under a deed executed after 1881.

Covenant F of the C. A. s. 7 (1) is implied by the executor.

Conveyance under power of sale in C. A. by mortgagee.

The conveyance must be made in professed exercise of the power of sale conferred by the C. A. in order to give to the purchaser the protection of s. 21 (2) against irregularities in the sale.

Where "the said" may be omitted.

The words "the said" may be conveniently omitted where there are no recitals, or where a person, not a party, has been previously mentioned.

Quantity of estate not defined on the premises.

Following the forms in the 4th schedule of the C. A. (which by s. 57 are declared to be sufficient) the "premises" (the part preceding the *habendum*) need not contain words of limitation; the estate to be taken may be defined only in the habendum. This is a return to the original office of the premises. The practice of limiting the estate both in the premises and in the *habendum* is stated by Sheppard in his Touchstone to be improper, though it has been generally adopted: Shep. Touch. by Preston, c. v. p. 74.

CONVEYANCE OF LEASEHOLDS. (*Witnessing part.*)

PURCHASE DEEDS.

No. XIII.

LEASEHOLDS. C. A. s. 7 (1), A. and B.

[*For recitals and ultimate devolution of lease*, see PRECED. Nos. XIV. and XVI. *post.*]

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of &c., the said A. B. AS BENEFICIAL OWNER hereby conveys unto C. D.

All the said premises demised by the hereinbefore recited lease [which premises are now known as (*add if necessary a modern description*)]

TO HOLD to C. D. during the residue of the term granted by the said lease at the rent and subject to the lessee's covenants and the conditions by and in the said lease reserved and contained and henceforth to be paid and observed [*add covenant by purchaser to pay rent, &c., Form No.* 1, *ante*]. In witness &c.

This form implies the covenants by the vendor, C. A. s. 7 (1), A. and B.

Why executors, administrators, and assigns omitted.

The words "executors, administrators, and assigns," usually added in assignments of leaseholds are superfluous; the executors or administrators take the personal estate of the assignee at Common Law, and the word "assigns" is not a word of limitation and has no effect: Williams, R. P. 145, 12th ed.; *Osborne to Rowlett*, 13 Ch. D. 777, per M. R.

The word "absolutely" may be used as an absolute assignment of personalty, and where the assignment is for a limited interest, as in leaseholds, the *habendum* may express that interest.

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS TO THE USES AND UPON THE TRUSTS OF A WILL.

No. XIV.

FREEHOLDS AND LEASEHOLDS.

THIS INDENTURE made the day of 188 , between C. S. of &c. [*mortgagee*], of the first part, A. H. of &c. [*vendor*], of the second part, H. D. of &c. [*tenant for life*], of the third part, and E. L. of &c., and L. P of &c., of the fourth part:

Parties.

Whereas A. H. is seised in fee simple of the freehold hereditaments hereinafter mentioned and conveyed by the first witnessing part of these presents:

Recitals.—Seisin of the freeholds by A. H.

And whereas by an indenture dated the 1st day of

PURCHASE DEEDS.
No. XIV.

June, 1651, and made between J. W. of the one part, and J. E. of the other part, the said J. W. demised All that &c., unto the said J. E. for the term of one thousand years without impeachment of waste under the yearly rent of a peppercorn:

Demise of the leaseholds.

Devolution of leaseholds.

And whereas, after divers mesne assignments and acts in the law, ultimately under an indenture dated &c., the premises so demised became vested in J. H., deceased, for the residue of the said term of one thousand years:

Mortgage thereof.

And whereas by an indenture of mortgage dated &c., and made between the said J. H. of the one part, and the said C. S. of the other part, the said J. H. assigned the said demised premises unto the said C. S. for the residue of the said term of one thousand years by way of mortgage for securing the sum of £ and interest thereon:

Will and death of mortgagor.

And whereas the said J. H. died on &c., having by his will, dated &c., appointed his son the said A. H. his executor, and bequeathed to him the said demised premises and he proved the said will on &c., in the Principal Probate Registry:

Will of the testator to the uses whereof the conveyance is to be made, and under which H. D. is tenant for life.

Power to his trustees to sell and exchange,

and invest the proceeds in the purchase of hereditaments.

And whereas E. G. D., late of &c., deceased, duly made his will dated &c., and thereby devised all his real estate in the counties of &c., To the use of his eldest son the said H. D. during his life, without impeachment of waste, with remainders to his issue male and to other sons and their issue male; and the said will contained divers powers and provisions, including a power to C. J. S. and E. B. W. (the trustees therein named) during the life of each of the testator's sons thereby made tenants for life, who for the time being should be entitled to the possession or receipt of the rents and profits of the said hereditaments thereby devised (with his consent in writing), to sell or exchange in manner therein mentioned, the hereditaments subject to the limitations of the said will; And the said testator declared that the said C. J. S. and E. B. W. should receive the money arising by any such sale and invest the same in the purchase of hereditaments in England or Wales for an estate of inheritance in fee simple, or of lands of a leasehold or copyhold

or customary tenure convenient to be held therewith or with any hereditaments for the time being subject to the subsisting uses of that his will, so that during the life of any person thereby made tenant for life who should for the time being be entitled as aforesaid, every such purchase should be made with his consent in writing, And should cause the hereditaments so purchased to be settled and assured to the uses, upon the trusts, and subject to the powers and provisions in the said will declared concerning the hereditaments thereinbefore devised in strict settlement, or as near thereto as the deaths of parties and other intervening circumstances would admit of, but not so as to increase or multiply charges, and so that if any of the lands purchased or taken in exchange should be held by a lease for years the same should not vest absolutely in any person thereby made tenant in tail male by purchase who should not attain the age of twenty-one years, but on his death under that age should devolve in the same manner as if they had been freeholds of inheritance and had been settled accordingly; And the said will contained a power to appoint new trustees:

And whereas the said E. G. D. made a first and second codicil dated respectively &c., to his said will not affecting his said will so far as hereinbefore recited, and also made a third codicil dated &c. to his said will, and thereby in effect substituted the said E. L. as a trustee of his said will in the place of the said E. B. W., and devised and gave to the said C. J. S. and E. L. the same estates and powers as were by the said will devised and given to the said C. S. and E. B. W.:

Codicil substituting E. L. as a trustee instead of one of the original trustees.

And whereas the said testator died on &c., without having revoked the said will and codicils, which were duly proved in the Principal Probate Registry on &c.

Death of last-mentioned testator, and probate of his will.

And whereas by an indenture dated &c., and made between the said H. D. of the first part, the said C. J. S. of the second part, the said E. L. of the third part, and the said L. P. of the fourth part, the said L. P. was under the aforesaid power in the said will duly appointed a trustee of the said will and codicils in the place of the said C. J. S.:

Appointment of L. P. as trustee of that will.

PURCHASE DEEDS.
No. XIV.

Agreement to purchase.

And whereas the said E. L. and L. P. as such trustees as aforesaid, and with the consent of the said H. D., have agreed with the said A. H. for the purchase of the freehold hereditaments hereinafter mentioned and also of the said leasehold premises comprised in the said term of one thousand years, for all the residue of that term at the price of £ :

Mortgage debt still due.

And whereas the principal sum of £ and no more is now owing to the said C. S. on the security of the hereinbefore recited mortgage, all interest thereon having been paid, as he hereby acknowledges, and he has agreed on receiving the sum so due to him to join in these presents as hereinafter appearing:

First testatum. Conveyance of the freeholds.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of £ paid to the said A. H. and of the further sum of £ paid to the said C. S., as hereinafter mentioned, by the direction of the said A. H., and making together the total purchase-money of £ paid to or at the request of the said A. H. by the said E. L. and L. P. out of money in their hands as such trustees as aforesaid (the payment and receipt as aforesaid of which sum of £ the said A. H. hereby acknowledges), the said A. H. AS BENEFICIAL OWNER hereby conveys unto the said E. L. and L. P.

All that &c., containing statute measure or thereabouts, now in the occupation of M. as tenant thereof, which said premises are intended to be more particularly described in the first schedule hereto and to be delineated in the plan drawn in the margin of these presents, and to be therein coloured , and all other (if any) the lands and hereditaments comprised in the said schedule,

TO HOLD unto the said E. L. and L. P. in fee simple (*a*), To the uses, upon the trusts, and subject to the powers and provisions by the said will and codicils of the said E. G. D. declared and now subsisting concerning the hereditaments in England and Wales devised by the said will and the third codicil thereto as aforesaid.

(*a*) "Fee simple" is used in these Precedents in accordance with C. A. s. 51. The word "assigns," which is usually added is omitted as superfluous (see p. 195, *ante*).

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and in consideration of the sum of £ upon the execution of these presents at the request of the said A. H. paid to the said C. S., the receipt of which sum of £ the said C. S. hereby acknowledges, The said C. S. AS MORTGAGEE, at the request of the said A. H., hereby conveys and releases, and the said A. H. AS BENEFICIAL OWNER hereby conveys and confirms Unto the said E. L. and L. P.

Further testatum.

Conveyance of the leaseholds released from mortgage.

All the said premises comprised in and demised by the said indenture of the 1st day of June, 1651, a particular whereof is intended to be contained in the second schedule hereto,

TO HOLD unto the said E. L. and L. P. for the residue of the said term of one thousand years granted by that indenture, and discharged from all principal money and interest secured to the said C. S. as aforesaid, Upon the trusts and subject to the powers and provisions by the said will and codicils of the said E. G. D. declared or directed to be declared, and now subsisting, concerning leasehold hereditaments purchased with money arising by the sale of any of the hereditaments in England and Wales by the said will and third codicil devised as aforesaid.

In witness &c.

[*Add, if required, an Acknowledgment by A. H. of right to production of documents in the Schedule, and to delivery of copies thereof, and Undertaking for safe custody, Forms Nos.* 2 *and* 3, *ante.*]

[*Add if required for documents,* THE SCHEDULE ABOVE REFERRED TO.]

This Precedent implies covenant F by the mortgagees, and covenants A and B by the vendor, C. A. s. 7 (1).

See a further PRECEDENT of PURCHASE DEED, No. XXXII., p. 236, *post.*

SECT. II.

MORTGAGES AND FURTHER CHARGES.

For a PRECEDENT of a MORTGAGE IN FEE, without special provisions, see C. A., Schedule 4, Form I.

For a PRECEDENT of a MORTGAGE IN FEE to secure a consolidated debt, see p. 221, *post*.

No. XV. FREEHOLDS.

MORTGAGE IN FEE, with provisions for reduction of rate of interest; continuance of loan; restricting mortgagor's power of leasing; and authorizing consolidation.

Parties.

THIS INDENTURE made the &c., between A. of &c., [*mortgagor*] of the one part, and B. of &c., and C. of &c., [*mortgagees*] of the other part:

First testatum. Covenant for payment.

WITNESSETH that in consideration of £5000 paid to A. by B. and C. out of money belonging to them on a joint account, of which sum A. hereby acknowledges the receipt, A. hereby covenants [*here insert covenant to pay principal and interest, Form No.* 4];

Second testatum. Conveyance of freeholds.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid A. AS BENEFICIAL OWNER hereby conveys unto B. and C.

All that &c.

Habendum.

TO HOLD unto and to the use of B. and C. in fee simple Subject to the proviso for redemption following—

[*Proviso for redemption, Form No.* 6;

Covenant for insurance against fire, if required, Form No. 9;

Provision for reduction of interest, Form No. 10 *or* 11;

For continuing the loan, Form No. 12;

Authorizing consolidation of mortgages, Form No. 13;

And for restricting mortgagor's power of leasing without the consent of mortgagee, Form No. 15.]

MORTGAGES. No. XV.

In witness &c.

Powers to sell, to appoint a receiver, to lease and to give receipts, are not required: see C. A. ss. 18–22, 24, and summary of mortgagee's powers, p. 48, *ante*.

MORTGAGE OF LEASEHOLDS.

No. XVI. LEASEHOLDS.

THIS INDENTURE made the day of 18 , between T. G. of &c. [*mortgagor*] of the one part and J. P. D. of &c. and W. W. of &c. [*mortgagees*] of the other part:

Parties.

Whereas by an indenture of lease dated &c. and made between M. of the one part and X. Y. of the other part, All that piece of ground situate &c. with the messuage and other buildings thereon known as &c. were demised unto the said X. Y. for the term of ninety-nine years from the day of &c. at the yearly rent after the first two years of the said term of £ , payable half-yearly on the days therein mentioned and subject to the covenants and conditions therein contained and on the lessee's part to be performed and observed:

Recital of lease.

And whereas after divers mesne assignments and acts in the law, ultimately under an indenture dated &c., and made between &c., the said premises became and are now vested in the said T. G. for the residue of the term granted by the said lease:

Assignments.

And whereas the said J. P. D. and W. W. have agreed to advance, out of money belonging to them on a joint account, to the said T. G. the sum of £ upon having the repayment thereof with interest as hereinafter mentioned secured in manner hereinafter appearing:

Agreement for advance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £ paid to the said T. G. by the said J. P. D. and W. W. (the receipt of which sum of £ the said

First testatum. Covenant to pay.

MORTGAGES. No. XVI.

T. G. hereby acknowledges) the said T. G. hereby covenants [*here insert covenant to pay principal and interest, Form No.* 4.]

Second testatum. Demise. Parcels. Habendum.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said T. G. AS BENEFICIAL OWNER hereby demises unto the said J. P. D. and W. W. All the premises comprised in and demised by the said recited lease;

TO HOLD to the said J. P. D. and W. W. for the residue of the term granted by the said lease, except the last three days thereof, but Subject to the proviso for redemption hereinafter contained.

[*Declaration of trust of the principal term, Form No.* 5; *Proviso for redemption, Form No.* 6;]

Third testatum. Appointment of mortgagees as attorneys to assign original term.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said T. G. hereby nominates and appoints the said J. P. D. and W. W. and the survivor of them or other the persons or person entitled to the principal sum for the time being due on these presents to be the attorneys and attorney of the said T. G. for him and in his name and on his behalf and as his act and deed to sign, seal, and deliver and otherwise perfect any deed of assignment of the term granted by the said recited lease, which may be required on any sale of the premises in order to vest in a purchaser the residue of the term granted by the said recited lease.

[*Covenant to insure, Form No.* 9.]

In witness &c.

The last witnessing part renders necessary a 10*s.* stamp on the power of attorney. Its object is to prevent the necessity for a vesting order. The power being an authority coupled with an interest is irrevocable while any money remains on the security: *Gaussen* v. *Morton*, 10 B. & C. 731; *Clerk* v. *Laurie*, 2 H. & N. 200, per Williams, J.; *Bromley* v. *Holland*, 7 Ves. 28. It only enables an assignment of what the mortgagor could assign and ceases on his death; it has no effect after he has assigned, nor any effect to defeat a subsequent subdemise. See Special Condition 27, p. 141, *ante*, applicable to a sale under a mortgage framed after this precedent.

Covenants (C) and (D) of C. A. s. 7 are implied.

Powers to sell and to give receipts are not required, see C. A. ss. 19–22, and summary of mortgagee's powers, p. 48, *ante*, and see last Preced. for any special provisions required.

MORTGAGE OF COPYHOLDS.

No. XVII.
COPYHOLDS.

Parties.

THIS INDENTURE made &c., between A. of &c. [*mortgagor*] of the one part, and B. of &c. and C. of &c. [*mortgagees*] of the other part

First testatum. Covenant to pay.

WITNESSETH that in consideration of £ paid to A. by B. and C. out of moneys belonging to them on a joint account, the receipt whereof A. hereby acknowledges, A. hereby covenants [*here insert covenant to pay principal and interest, Form No.* 4].

Second testatum. Covenant to surrender copyholds.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid A. as BENEFICIAL OWNER hereby covenants with B. and C. that A. and all other necessary parties will forthwith, at the cost of A., surrender into the hands of the lord or lady of the manor of in the county of according to the custom of the said manor

All that &c., to which hereditaments the said A. was admitted tenant at a court held of the said manor on the &c.

TO THE USE of B. and C. and their heirs according to the custom of the said manor at and under the accustomed rents, suits, and services, Subject nevertheless [*continue Form No.* 7, *for making void the surrender, followed by the charge and declaration of trust by A. until surrender*].

In witness &c.

See note to mortgage of freeholds, Precedent XV., *ante*, and see that Precedent for any special provisions required.

The word "heirs" is still necessary in a surrender of copyholds, see note to C. A. s. 51, p. 93. As to the covenants implied, see p. 35.

MORTGAGES. No. XVIII.

MORTGAGE OF FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

THIS INDENTURE made the &c., between A. of &c. [*mortgagor*] of the one part, and B. of &c. and C. of &c. [*mortgagees*] of the other part.

Recitals. Seisin of freeholds and copyholds.

WHEREAS A. is seised in fee simple of the freehold hereditaments hereinafter conveyed, and is seised for an estate of inheritance according to the custom of the manor of in the county of of the copyhold hereditaments hereinafter covenanted to be surrendered, and as to all the said premises free from incumbrances:

Lease.

And whereas by an indenture of lease dated &c. and made between X. of the one part and the said A. of the other part All that piece of land situated &c. and the messuages thereon were demised to the said A. for the term of years from the day of &c. at the rent and subject to the covenants and conditions therein contained and on the lessee's part to be performed and observed (*a*).

Agreement for loan.

And whereas B. and C. have agreed to advance to A. the sum of £ out of money belonging to them on a joint account upon having the repayment thereof with interest secured in manner hereinafter appearing.

First testatum. Covenant for payment.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and [*continue as in the first witnessing part of Precedent XV., ante* (*Mortgage of Freeholds*).]

Second testatum. Conveyance of freeholds.

AND THIS INDENTURE ALSO WITNESSETH that [*continue as in the second witnessing part of the same precedent down to* B. and C. in fee simple] subject to the proviso for redemption hereinafter contained.

Second testatum. Demise of leasehold.

AND THIS INDENTURE ALSO WITNESSETH that [*continue and adapt the second witnessing part of Precedent XVI.,*

Schedule of leases.

(*a*) Where there are numerous leases a short recital of the mortgagor's title may be made by reference to a schedule, the first column of which should contain short descriptions of the property; the second column the dates and parties to the leases; the third and fourth columns the terms created and the rents reserved, and the fifth column the last assignments to the mortgagor.

ante (*Mortgage of Leaseholds*), *with the mortgagor's declaration of trust of the principal term.*]

Trust of principal term.

[*Proviso for redemption, Form No.* 6, *saying* conveyed and demised respectively, *instead of* conveyed, *And* reconveyed and surrendered respectively *instead of* reconveyed.]

Third testatum. Power of attorney for assigning principal terms.

AND THIS INDENTURE ALSO WITNESSETH that [*continue and adapt Power of Attorney as in the last mentioned Precedent, if required.*]

Fourth testatum. Covenant to surrender copyholds.

AND THIS INDENTURE ALSO WITNESSETH that [*continue as in second witnessing part of Mortgage of Copyholds, Precedent XVII., with proviso for redemption of copyholds, followed by the charge and declaration of trust by A. until surrender, Form No.* 7; *covenant to insure, Form No.* 9.]

In witness &c.

See note to Mortgage of Freeholds, Precedent XV., *ante*, and see that Precedent for any special provisions required.

MORTGAGE OF A LIFE INTEREST AND POLICIES.

No. XIX. LIFE INTEREST AND POLICIES.

THIS INDENTURE made the day of between W. H. of &c. [*mortgagor*], of the one part, and A. of &c., B. of &c., C. of &c., and D. of &c., the estate trustees of the Z. Life Assurance Society, a memorial of whose names has been duly inrolled in the Central Office of the Supreme Court of Judicature pursuant to the Z. Assurance Society's Act, 18 (*a*), and which four persons are hereinafter called the estate trustees, and which four persons or other the estate trustees or trustee for the time being of the said society are hereinafter called the estate trustees or trustee [*mortgagees*], of the other part:

Parties.

Whereas under the will dated &c., and proved in the Principal Probate Registry on &c., of the late W. H., the father of the said W. H., party hereto, who died

Recital that mortgagor is tenant for life.

(*a*) See Guardian Assurance Company's Act, 1850, Legal and General Act, 1878, &c.

MORTGAGES No. XIX.

on &c., and of which will G. and J. are the present surviving trustees, and under an indenture dated &c., and made between &c., being a conveyance to the uses of the said will, the messuages, lands, and hereditaments, forming the C. estate in the county of G., hereinafter mentioned and demised, stand limited subject to the incumbrances mentioned in the second schedule hereto, to the use of the said W. H., party hereto (hereinafter called simply W. H.), during his life without impeachment of waste, with remainders over:

And of the investments of settled money.

And whereas under an indenture of settlement dated &c., and made between &c., the said W. H. is now entitled to receive during his life the annual income of the investments now held on the trusts of the said settlement, or of the varied investments for the time being representing the investments so now held, which investments so now held are standing in the joint names of M. and N. as the present trustees of the said settlement, and are described in the third schedule hereto:

And to policies on his life.

And whereas the said W. H. is entitled to the two policies of assurance effected in his own name and on his own life hereinafter mentioned and assigned (*b*):

Agreement for loan.

And whereas the estate trustees have agreed to advance to the said W. H. the sum of £ upon having the payment thereof with interest as hereinafter mentioned secured as hereinafter appearing:

First testatum. Covenant for payment.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £ paid to the said W. H. by the estate trustees out of money belonging to them as such trustees (the receipt of which sum of £ the said W. H. hereby

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(*b*) If the policies are numerous this recital may run thus—

And whereas the said W. H. is entitled to the [*six*] several policies of assurance effected in his own name and on his own life, the particulars whereof are contained in the 4th schedule hereto.

In the witnessing part assigning the policies the description will be—

All those [*six*] policies of assurance on the life of the

acknowledges), the said W. H. hereby covenants with the estate trustees that he will on the day of next pay to the estate trustees or trustee [*adapt Form No.* 4, *for payment to "the estate trustees or trustee" of principal and interest*].

Second testatum.

Demises of life estate.

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid, the said W. H. AS BENEFICIAL OWNER hereby grants, bargains, sells, and demises unto the estate trustees

All that mansion-house called C., with the lands thereto belonging, and all the manors, messuages, lands, tithes, rents, and hereditaments, in the parishes of N. and B. in the county of G., containing together acres or thereabouts, the particulars whereof are contained in the 1st schedule hereto, And all other (if any) the lands and hereditaments now subject to the limitations of the will of the said W. H., deceased;

Habendum.

TO HOLD unto the estate trustees for the term of ninety-

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said W. H. mentioned in the 4th schedule hereto, and all money to become payable thereunder.

The form of the schedule will be—

FOURTH SCHEDULE ABOVE REFERRED TO.

1	2	3	4	5	6
—	Date of Policy.	Office in which effected.	Number of Policy.	Sum Assured exclusive of Bonus.	Annual Premium.
				£	£ s. d.
1	10th May, 1870	Z. Society	1001	4000	80 0 0
2	1st June, 1871	Y. Company	10,400	5000	104 2 6
&c.	&c.	&c.	&c.	&c.	&c.

If it is necessary in the body of the draft to refer to any particular policy as being subject to a charge or otherwise, it may be referred to as—

The policy N^od^ 1 in the first column of the fourth schedule hereto.

MORTGAGES. No. XIX.

nine years from the date of these presents if the said W. H. should so long live without impeachment of waste, Subject to the several incumbrances mentioned in the 2nd schedule hereto, and Subject also to the proviso for redemption hereinafter contained.

Third testatum. Assignment of life interest in investments,

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said W. H. AS BENEFICIAL OWNER hereby assigns unto the estate trustees,

First All the annual income to arise during the life of the said W. H. from the investments mentioned in the 3rd schedule hereto, or from the varied investments for the time being representing the same, and all other (if any) the annual income to which he is now or may become entitled under the said settlement;

and of policies.

Secondly, All those two policies of assurance on the life of the said W. H., the first for the sum of £ effected with the Z. Life Assurance Society dated &c., numbered &c., and at the annual premium of £ , and the second for the sum of £ effected with the X. Life Office dated &c., numbered &c., and at the annual premium of £ , and the said sums of £ and £ assured by and all other money to become payable under the said policies, and the full benefit of the said policies,

Habendum.

TO HAVE AND RECEIVE the same unto the estate trustees subject to the proviso for redemption hereinafter contained,

[*Proviso for redemption on payment "to the estate trustees or trustee" of principal and interest, Form No.* 6;

Covenant to keep up life policies, Form No. 8;

Provision for reduction of interest, Form No. 10;

Agreement that money shall remain for a time certain, Form No. 12.]

In witness &c.

Trust for application of policy money and other money and power to give receipts are not required, see C. A. s. 22, nor power of sale, see C. A. ss. 19-21.

FOR A PRECEDENT of a FURTHER CHARGE by SUPPLE-

MENTAL DEED on FREEHOLDS, see C. A. 4th Schedule, Form II. MORTGAGES. No. XIX.

FURTHER CHARGE by SUPPLEMENTAL DEED on Life Interest and Policy comprised in last Precedent XIX., and ASSIGNMENT of FURTHER POLICY as security. No. XX. FURTHER CHARGE.

THIS INDENTURE made the day of between W. H. of &c. [*mortgagor*] of the one part, and A. of &c., B. of &c., C. of &c., and D. of &c., the estate trustees &c., [*the same description as in the last precedent*] [*mortgagees*] of the other part: Parties.

Whereas these presents are supplemental to an indenture of mortgage for securing £ and interest dated &c., and made between the same parties as these presents, and hereinafter called the principal indenture: Recitals. That deed is supplemental.

And whereas the said sum of £ secured by the principal indenture with the current half-year's interest thereon is still due: That debt and interest due.

And whereas the said W. H. has effected the further policy of assurance on his life hereinafter mentioned and assigned: Another insurance.

And whereas the estate trustees have agreed to advance out of money belonging to them as such trustees to the said W. H. the further sum of £ upon having the repayment thereof with interest as hereinafter mentioned secured, and also upon having the said sum of £ and the interest thereon due under the principal indenture further secured, as hereinafter appearing: Agreement for further advance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £ to the said W. H. paid by the estate trustees out of money belonging to them as such trustees, the receipt of which sum of £ the said W. H. hereby acknowledges, the said W. H. hereby covenants with the estate trustees [*covenant to pay the further sum on next half-yearly day and interest half-yearly, as in last Precedent*]. AND FURTHER that the hereditaments, annual First testatum. Covenant for payment. And further charge.

MORTGAGES. No. XX.

income, policies, and moneys, demised and assigned respectively by the principal indenture shall stand charged with and shall not be redeemed except upon payment of the said sum of £ and the interest thereon hereinbefore covenanted to be paid, as well as the said sum of £ and the interest thereon secured by the principal indenture.

Second testatum.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said W. H. AS BENEFICIAL OWNER hereby assigns unto the estate trustees

Assignment of new policy.

All that policy for the sum of £ effected in the name and on the life of the said W. H. with the W. Life Assurance Company dated &c., numbered , and at the annual premium of £ , and the said sum of £ and all other money to become payable thereunder, and the full benefit thereof:

Habendum.

TO HAVE AND RECEIVE the same unto the estate trustees Subject to the like right of redemption by the said W. H. as immediately after the execution of these presents and under the principal indenture, and these presents will be subsisting with respect to the said hereditaments, annual income, policies, and moneys demised and assigned respectively by the principal indenture.

Covenants in principal deed to apply.

AND the said W. H. hereby COVENANTS with the estate trustees that all the covenants and provisions contained in the principal indenture shall apply and have effect with respect to the policy hereby assigned, and also for securing the payment of the principal money and interest hereby covenanted to be paid in the same manner as if the whole principal money secured by the principal indenture and these presents, making together the sum of £ and the interest thereon, had been originally secured by the principal indenture, and as if the said policy hereby assigned had been thereby assigned for securing the payment of the said aggregate sum of £ and the interest thereon, and as if the said aggregate sum and all the said policies had been actually mentioned and included in the covenants and provisions contained in the principal indenture.

Provision for reduction of interest and term of loan to apply.

AND IT IS HEREBY AGREED that the provision for reduction of the rate of interest from £ per cent. to £ per cent. contained in the principal indenture, and also the provision contained therein restricting the right of calling in or paying off the principal money shall apply to and include the principal money and interest hereby secured in like manner as if the said aggregate principal sum of £ had been originally secured by the principal indenture, and the covenants and provisions of that indenture had applied to the policy hereby assigned in the manner in which the same are so applied by the covenant of the said W. H. hereinbefore contained.

In witness &c.

TRANSFERS OF MORTGAGES.

SECT. III.

TRANSFERS OF MORTGAGES.

No. XXI.

TRANSFER BY SUPPLEMENTAL DEED OF MORTGAGE IN FEE AND FURTHER CHARGE, adapted to C. A. sch. 4, Forms I. and II., mortgagor not concurring.

Parties.

THIS INDENTURE made the day of between D. of &c. [*transferor*] of the one part, and E. of &c. [*transferee*] of the other part, and supplemental to an indenture of mortgage dated &c., and made between A. of the one part and B. and C. of the other part, for securing to the said B. and C. the sum of £ and interest at per cent. per annum on hereditaments situated at &c., and supplemental also to an indenture of further charge dated &c., and made between the same parties and in the same order for securing to the said B. and C. the further sum of £ and interest at the rate aforesaid on the same hereditaments:

Recitals of the death of mortgagees, and D. executor of survivor.

Whereas the said B. died on &c. 1882, and the said C. died on &c. 1883, having by his will dated &c., appointed the said D. his executor, who proved the said will in the Principal Probate Registry on &c. (*a*):

That principal and current interest due.

And whereas the said principal sums of £ and £ are due to the said D. on the hereinbefore mentioned securities with interest thereon from the day of last:

And whereas the said E. has agreed to pay to the said D. the said sums of £ and £ , and also the sum of £ for the interest thereon from the said day of last, making together the total sum of £ upon having such transfer as is hereinafter expressed of the said principal sums of £ and £ and interest, and the securities for the same:

Agreement for transfer.

First testatum. Assignment of debts.

NOW THIS INDENTURE WITNESSETH that in pursuance

(*a*) The mortgaged land is vested in the executor of the last surviving mortgagee under C. A. s. 30.

of the said agreement and in consideration of the said sum of £ [*the total sum*] upon the execution of these presents paid to the said D. by the said E., the receipt whereof the said D. hereby acknowledges, the said D. AS THE PERSONAL REPRESENTATIVE of the said C. deceased hereby assigns unto the said E.

All those the said principal sums of £ and £ owing on the aforesaid securities, and all interest due and to become due thereon respectively, and the full benefit of and right to exercise and enforce all powers and securities for compelling payment of the said sums and interest,

Habendum.

TO HAVE AND RECEIVE the same unto the said E. absolutely.

Second testatum. Conveyance of hereditaments.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said D. AS SUCH PERSONAL REPRESENTATIVE AS AFORESAID hereby conveys unto the said E.

All the hereditaments comprised in and conveyed by the said indenture of mortgage and now vested in the said D. subject to redemption thereunder and under the said indenture of further charge,

TO HOLD unto and to the use of the said E. in fee simple Subject to such right of redemption as is now subsisting therein under the said indentures of mortgage and further charge. In witness &c.

No. XXII.

TRANSFER by SUPPLEMENTAL DEED of a MORTGAGE IN FEE by the executor of the survivor of deceased mortgagees, mortgagor concurring and receiving a further advance.

Parties.

THIS INDENTURE, made the &c., Between X. of &c. [*transferor*], of the first part, A. of &c. [*mortgagor*], of the second part, and M. of &c. [*transferee*], of the third part, and supplemental to an indenture of mortgage, hereinafter called the principal indenture, dated &c., and made between the said A. of the one part and B. and C. of the

TRANSFERS OF MORTGAGES.
No. XXII.

other part, for securing to the said B. and C. £5000 and interest [*Precedent* XV., *ante*].

Recitals. Death of the mortgagees.

Whereas the said B. died on &c. 1882, and the said C. died on &c. 1883, having by his will dated &c., appointed the said X. sole executor thereof, who proved the same on the &c., in the Principal Probate Registry:

Debt still owing.

And whereas the said sum of £5000 is still due to the said X. as such executor as aforesaid, but all interest thereon has been paid up to the date of these presents as he hereby acknowledges:

Agreement for transfer and further advance.

And whereas M. has agreed at the request of A. to pay to X. the sum of £5000, and to advance to A. the further sum of £1000 upon having the payment of the aggregate sum of £6000 with interest secured in manner hereinafter appearing:

First testatum. Assignment of original debt.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £6000 paid by M. to X. as such executor as aforesaid by the direction of A. (the receipt whereof X. hereby acknowledges), X. AS THE PERSONAL REPRESENTATIVE of the said C. deceased, and by the direction of A., hereby assigns (*a*) unto M. the sum of £5000 secured by the principal indenture, and all interest henceforth to become due thereon, and the benefit of all securities for the same, To hold to M. absolutely:

Second testatum. Covenant to pay principal and interest.

AND THIS INDENTURE ALSO WITNESSETH that in consideration of £5000 paid by the said M. in manner aforesaid, and of the further sum of £1000 paid to A. by M. (the receipt of which sum of £1000 and the payment to X. in manner aforesaid of which sum of £5000 A. hereby acknowledges), A. hereby covenants with M. [*covenant to pay £6000 and interest at 5 per cent., Form No. 4.*]

Third testatum. Conveyance.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid X. AS SUCH PERSONAL REPRESENTATIVE as aforesaid, by the direction of A. hereby conveys

(*a*) The original debt is assigned in order to retain its priority. The mortgagee is bound to assign the debt and transfer the estate by the direction of the mortgagor: C. A. s. 15.

and releases, And A. as BENEFICIAL OWNER hereby conveys and confirms unto M.

TRANSFERS OF MORTGAGES. No. XXII.

All the hereditaments comprised in and conveyed by the principal indenture, and now vested in X. subject to redemption thereunder,

To HOLD unto and to the use of M. in fee simple, Subject to the proviso for redemption following, [*proviso for redemption, Form No.* 6;

Provision for reduction of interest on the aggregate sum, Form No. 10 or 11;

For continuing loan, Form No. 12;

Authorising consolidation, Form No. 13;

For restricting mortgagor's power of leasing, Form No. 15.]

In witness &c.

TRANSFER OF A MORTGAGE (LONG TERM).

No. XXIII.

THIS INDENTURE (*a*) made the day of 188 between W. E. S. of &c. [*transferor*] of the first part,

Parties.

(*a*) This and the next three Precedents are part of the same transaction, and are given as an illustration of how the several charges on an incumbered estate may be consolidated in one mortgagee, a further advance being made.

It is most convenient to take a separate transfer from each incumbrancer. There is then only a short deed for each to approve instead of one long deed going round to all for approval.

In the transfers in this and the next Precedent it will be observed that full recitals of the intermediate transfers are not given. It is sufficient that the original mortgage is recited, and the dates, parties and result of the transfers given. The transferor only transfers what he has under them.

So in the principal mortgage (Precedent XXVI., *post*) it is unnecessary to do more than give a list of the incumbrances in the schedule. A glance at the schedule shews at once the state of the title. If all the incumbrances and their transfers are recited according to the old fashion it takes time to read and ascertain what they are. In reading some old long deed with a mass of accurate and neatly drawn recitals as to the incumbrances on a property like that dealt with by this and the three following Precedents, one is inclined to wonder that the

Convenience of putting incumbrances in schedule.

TRANSFERS OF MORTGAGES.
No. XXIII.

S. E. F. [*mortgagor*] of the second part, and G. P. C. [*transferee*] of the third part:

Recital of mortgage.

Whereas by an indenture dated the 8th day of April 1873, and made between &c., after recitals whereby it appeared that under an indenture dated &c. 1825, a term of one thousand years, without impeachment of waste, in the hereditaments in the county of S. thereby settled was vested in the said R. and B. upon trusts for raising the sum of £8000 for R. A. S. deceased, and that the said sum was then payable to her children, parties of the first part to the indenture now in recital, and that the said S. E. F. was entitled to the inheritance of the hereditaments comprised in the said term, and had paid the sum of £2000 in part discharge of the said sum of £8000, leaving a balance of £6000 unpaid in respect thereof, It was witnessed that in consideration of £6000 paid by the said W. E. S. to the parties of the first part to the indenture now in recital in equal shares, they assigned the said sum of £6000 remaining charged on the said settled hereditaments and the interest to become due for the same unto the said W. E. S.: And it was also witnessed that the said R. and B. assigned all the hereditaments comprised in the said indenture dated &c. 1825 unto the said W. E. S. for the residue of the said term of one thousand years by way of mortgage for securing payment to him of the said sum of £6000 and interest thereon at the rate of 4 per cent. per annum:

Sum due.

And whereas the said sum of £6000 now remains owing to the said W. E. S. on the aforesaid security, but all interest thereon has been paid as he hereby acknowledges:

Title to equity of redemption.

And whereas the said S. E. F. is now absolutely en-

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learned conveyancer should have expended so much time and skill in constructing a labyrinth for the apparent purpose only of making other practitioners expend more time and skill in finding their way into it. The schedule to the principal mortgage in the text (Precedent XXVI., *post*) is much easier to draw and to understand when drawn than the old-fashioned recitals.

titled in possession to or has a general power of appointment over the fee simple in possession of the premises comprised in the hereinbefore recited indenture, subject to the security thereby made and to several other incumbrances, And at his request the said G. P. C. has agreed to pay to the said W. E. S. the sum of £6000 upon having such transfer as is hereinafter contained of the said mortgage debt of £6000 and the interest to become due thereon and the securities for the same:

Agreement for transfer.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £6000 paid to the said W. E. S. by the said G. P. C. at the request of the said S. E. F. (the receipt of which sum of £6000 the said W. E. S. hereby acknowledges) the said W. E. S. AS MORTGAGEE hereby assigns unto the said G. P. C.

First testatum. Assignment of debt.

All that the principal sum of £6000 now owing on the security aforesaid, and the interest to become due for the same, and the full benefit of and the right to exercise and enforce all powers and securities for compelling payment of the said sum and interest,

TO HAVE AND RECEIVE the same unto the said G. P. C. absolutely.

Habendum.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said W. E. S. AS MORTGAGEE, at the request (*b*) of the said S. E. F., hereby conveys and the said S. E. F. confirms unto the said G. P. C.

Second testatum. Assignment of term by the direction of beneficial owner.

All the hereditaments comprised in and assigned by the said recited indenture and now vested in the said W. E. S. subject to redemption thereunder,

Parcels.

TO HOLD to the said G. P. C. for the residue of the said term of one thousand years, Subject to the right of redemption subsisting therein under the said recited indenture on payment of the said sum of £6000 and the interest thereon. In witness &c.

Habendum.

(*b*) It is not requisite in this transfer to imply any covenant on the part of S. E. F. His covenant is contained in the principal mortgage, *post*.

TRANSFER OF MORTGAGES.

No. XXIV.

TRANSFER OF A MORTGAGE (LONG TERM).

Parties.

THIS INDENTURE made the day of 188, between T. F. of &c., and J. B. of &c. [*transferors*] of the first part, S. E. F. of &c. [*mortgagor*] of the second part, and G. P. C. of &c. [*transferee*] of the third part:

Recital of mortgage.

Whereas by an indenture dated the 5th day of April 1825, and made between &c., after recitals whereby it appeared that under an indenture of settlement dated &c., the said R. S. had power to make the appointment and charge thereinafter contained on the hereditaments thereby settled, It was witnessed that in consideration of £10,000 paid by the said W. M. for the purpose in the indenture now in recital mentioned, the said R. S. charged all the hereditaments comprised in the said settlement with the payment to the said W. M. of the sum of £10,000 and interest thereon at 4 per cent. per annum, And by the indenture now in recital the said R. S. appointed all the hereditaments comprised in the said settlement to the said W. M. for the term of five hundred years, without impeachment of waste, by way of mortgage for securing payment of the said sum of £10,000 and the interest thereon:

Intermediate transfers.

And whereas under six indentures, the first dated the 5th day of April 1826, and made &c., the second dated &c. [*here follow dates and parties to six successive deeds of transfer*], being successive transfers of mortgage, the said mortgage debt of £10,000 secured by the said indenture of the 5th day of April, 1825, and the said term of five hundred years forming the security for the same, became vested in the said T. F. and J. B.:

Sum due.

And whereas the said sum of £10,000 now remains owing as to £5000 part thereof to the said T. F., and as to £5000 residue thereof to the said J. B. on the security of the aforesaid indentures of mortgage and transfer of mortgage, but all interest thereon has been paid, as they hereby acknowledge:

Title to equity of redemption.

And whereas the said S. E. F. is now absolutely entitled in possession to or has a general power of

appointment over the fee simple and inheritance of the hereditaments comprised in the said term of five hundred years, subject to the security for the said sum of £10,000 and the interest thereon, and several other incumbrances. [*Here follow agreement for transfer and transfer of the debt and term in the same form as in the last Precedent.*] In witness &c.

TRANSFER OF MORTGAGE IN FEE.

No. XXV.

THIS INDENTURE made the day of 188 between W. F. of &c. and B. H. of &c. [*transferors*] of the first part, S. E. F. of &c. [*mortgagor*] of the second part, and G. P. C. of &c. [*transferee*] of the third part. Parties.

Whereas by an indenture dated the 12th day of November, 1868, and made between the said S. E. F. of the one part, and R. S. T. and the said W. F. of the other part, in consideration of the sum of £9000 paid to the said S. E. F. by the said R. S. T. and W. F., the manor of C. in the county of S. and divers other lands and hereditaments in the same county, known as the C. Estates, were by the said S. E. F. appointed and assured to the use of the said R. S. T. and W. F. in fee simple, subject to the several incumbrances in the indenture now in recital mentioned and by way of mortgage for securing payment to them of the sum of £9000 and interest thereon on the day therein mentioned and since passed, and it was by the indenture now in recital declared that the said sum of £9000 belonged to the said R. S. T. and W. F. on a joint account: Recital of mortgage.

And whereas the said R. S. T. died in the year 1877:

And whereas by an indenture dated the 3rd day of May, 1878 (indorsed on the last recited indenture) and made between the said W. F. of the first part, the said B. H. of the second part, and the said W. F. and B. H. of the third part, after reciting that the said W. F. and B. H. were then jointly entitled in equity to the said sum of £9000 secured by the said recited indenture, and the interest due and to become due thereon, It was witnessed Transfer.

TRANSFER OF MORTGAGES. No. XXV.

that in consideration of the premises the said W. F. assigned the said principal sum of £9000 and the interest due and to become due thereon unto the said W. F. and B. H. absolutely, And the said W. F. granted all the hereditaments comprised in the said recited indenture and then remaining vested in him unto the said B. H. in fee simple to the use of the said W. F. and B. H. in fee simple, subject to the right of redemption then subsisting therein on payment of the said sum of £9000 and the interest thereon:

Sum due.

And whereas the said sum of £9000 now remains owing to the said W. F. and B. H. on the security aforesaid, but all interest for the same has been paid as they hereby acknowledge, And the said G. P. C. has agreed at the request of the said S. E. F. to pay to the said W. F. and B. H. the sum of £9000 upon having such transfer made as hereinafter contained of the said mortgage debt of £9000 and interest to become due thereon and the securities for the same:

Agreement for transfer.

First testatum. Assignment of debt.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £9000 paid to the said W. F. and B. H. by the said G. P. C. at the request of the said S. E. F. (the receipt of which sum of £9000 the said W. F. and B. H. hereby acknowledge) the said W. F. and B. H. AS MORTGAGEES hereby assign unto the said G. P. C.

All that the principal sum of £9000 now owing on the security of the hereinbefore recited indentures and the interest henceforth to become due for the same, and the full benefit of and the right to exercise and enforce all powers and securities for compelling payment of the said sum and interest,

Habendum.

TO HAVE AND RECEIVE the same unto the said G. P. C. absolutely.

Second testatum. Conveyance of the land.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said W. F. and B. H. AS MORTGAGEES and at the request (*a*) of the said S. E. F. hereby

(*a*) See note (*b*), Preced. XXIIII., p. 217, *ante*.

convey and the said S. E. F. hereby confirms unto the said G. P. C. MORTGAGES. No. XXV.

All the said hereditaments and premises comprised in and conveyed by the said recited indentures of &c. 1868 and &c. 1878 and which are now vested in the said W. F. and B. H. subject to redemption under the same indentures, Parcels.

TO HOLD unto and to the use of the said G. P. C. in fee simple Subject to the right of redemption subsisting therein on payment of the said sum of £9000 and the interest thereon. In witness &c. Habendum.

MORTGAGE IN FEE to secure consolidated debt, including incumbrances transferred and further advance. No. XXVI.

THIS INDENTURE (*a*) made the day of 188 between S. E. F. of &c. [*mortgagor*] of the one part, and G. P. C. of &c. [*mortgagee*] of the other part. Parties.

Whereas under an indenture dated &c. made between the said S. E. F. of the one part and W. S. of the other part and duly enrolled as a disentailing assurance, the manor, lands, and hereditaments hereinafter mentioned and intended to be hereby appointed and conveyed now stand limited subject to the several incumbrances mentioned in the second schedule hereto To such uses, upon such trusts, and subject to such powers and provisions as the said S. E. F. shall by deed, will, or codicil appoint, and in default of appointment To the use of the said S. E. F. during his life without impeachment of waste with remainders over: Recital of title of mortgagor subject to incumbrances in second schedule.

And whereas all the incumbrances representing a principal sum of £65,000 with the securities for the same mentioned in the first part of the said second schedule hereto, have been transferred to and are now vested in the said G. P. C. by the several indentures dated in this present year mentioned in the first part of the same schedule, and the incumbrances mentioned in the second Incumbrances in first part of second schedule transferred to mortgagee for £65,000.

(*a*) This is the principal mortgage referred to in notes (*a*) and (*b*) to Precd. XXIII., pp. 215 and 217, *ante*.

MORTGAGES. No. XXVI.

part of the same schedule still remain outstanding in the persons in the said second part mentioned:

£65,000 advanced at request of mortgagor.

And whereas the sum of £65,000 was advanced by the said G. P. C. and applied in obtaining transfers to him of the incumbrances mentioned in the first part of the said second schedule hereto at the request of the said S. E. F.:

Agreement for further advance of £5000 and for consolidation.

And whereas all interest on the said sum of £65,000 has been paid to the date hereof, and the said G. P. C. has agreed to advance to the said S. E. F. the further sum of £5000, making, with the said sum of £65,000, the total sum of £70,000 advanced by the said G. P. C. to or on account of the said S. E. F. upon having the repayment of the said sum of £70,000 with interest thereon at the rate hereinafter mentioned secured in manner hereinafter appearing:

First testatum. Covenant to pay principal and interest.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £65,000 so paid as aforesaid by the said G. P. C. for obtaining transfers of the said incumbrances, and also of the sum of £5000 at or before the execution of these presents paid to the said S. E. F. by the said G. P. C., the payment and receipt in manner aforesaid of which said sums of £65,000 and £5000, making together the sum of £70,000 paid by the said G. P. C. to or on account and by the direction of the said S. E. F., the said S. E. F. hereby acknowledges, The said S. E. F. hereby covenants with the said G. P. C. [*covenant to pay principal sum of* £70,000 *and interest, Form No.* 4].

Second testatum. Appointment and conveyance.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid and in exercise of the power contained in the said recited indenture of &c., and of every other power enabling him, the said S. E. F. as BENEFICIAL OWNER hereby appoints, and by virtue of his estate also conveys and confirms unto the said G. P. C.

Parcels.

ALL THAT the manor of C., in the county of S., and all other the messuages, lands, and hereditaments forming what is known as the C. estate in the same county, which estate is intended to be more particularly described in the first schedule hereto, and is intended to

be delineated in the plan hereto annexed and to be thereon coloured , And all other, if any, the lands and hereditaments comprised in the said first schedule hereto, or coloured on the said plan

TO HOLD unto and to the use of the said G. P. C. in fee simple, Subject to the several incumbrances mentioned in the first part of the second schedule hereto now vested in the said G. P. C. as aforesaid, and also to the incumbrances mentioned in the second part of the same schedule, and also Subject to certain drainage rentcharges, not exceeding together in the whole the annual sum of £ granted to the Lands Improvement Company, for terms expiring not later than the year 18 , and gradually decreasing in each year And also Subject to the proviso for redemption hereinafter contained, that is to say [*add proviso for redemption, Form No.* 6 ; *and covenant to insure buildings against fire, Form No.* 9.] In witness, &c.

Subject to incumbrances in first and second parts of the second schedule.

And to drainage charges.

And to redemption.

The FIRST SCHEDULE before referred to.

Schedules.

[*contains a particular of the property.*]

The SECOND SCHEDULE before referred to.

FIRST PART.

List of Mortgages on the C. Estate, which have all been transferred to and become vested in G. P. C.

—	Principal Sum secured.	Date of Original Mortgage.	Name of Original Mortgagees.	Dates of Transfers.	Whether on Term or Fee.
1	6,000	8th April, 1873	W. E. S.	188 .	Term of 1000 years created by settlement of &c. 1825.
2	10,000	5th April, 1825	W. M.	5th April, 1826. &c. &c. 188 .	Term of 500 years created by mortgage deed.
3	9,000	12th November, 1868.	R. S. T. and W. F.	3rd May, 1878. 188 .	Fee.

[*Here follow six several other incumbrances making up* £65,000.]

Total £65,000

MORTGAGES. No. XXVI.

SECOND PART.

Incumbrances not transferred to G. P. C.

10	£14,000 bearing interest at 4 per cent.	18th August, 1873.	F. H. W.	..	Term of 5000 years.
11	Annuity of £700.	22nd July, 1844.	Payable to A. F.	..	Usual powers of distress.

See note to Precedent of mortgage of freeholds, No. XV., p. 200, *ante*.

No. XXVII.

VARYING LEASING POWERS.

AGREEMENT under C. A., s. 18, subs. 14, IN A MORTGAGE VARYING POWER OF LEASING (*a*).

AND IT IS HEREBY AGREED that the powers of leasing conferred on mortgagor and mortgagee by the Conveyancing and Law of Property Act, 1881, shall be varied and extended in the following particulars:—

Building leases for 999 years.

1. A building lease, or building leases, may be granted for any term not exceeding nine hundred and ninety-nine years.

Streets, gardens, squares, &c., may be authorised.

2. Every building lease may authorise any part of the premises to be laid out for streets, roads, paths, squares, gardens, and other open spaces, sewers, drains, and watercourses, either to be dedicated to the public or not, with fences, pavings, connexions and other works incidental thereto respectively.

Mining leases.

3. A lease or leases may be granted for mining purposes, as follows, (that is to say,)

No. XXVIII.

APPLYING LEASING POWERS.

AGREEMENT under C. A., s. 18, subs. 16, APPLYING LEASING POWERS of the Act to mortgages previously made.

THIS INDENTURE, made the day of , 18 , between [*mortgagor*] of &c., of the one part, and the

(*a*) For an agreement excluding mortgagor's powers of leasing except with the mortgagee's consent, see General Form, No. 15, p. 158, *ante*.

several persons whose hands and seals are hereunto affixed in the third column of the schedule hereto, being incumbrancers on the estates of the said [*mortgagor*], situated at , in the county of , under the several indentures the dates whereof and the parties whereto are specified in the first and second columns of the same schedule of the other part:

WITNESSETH that it is hereby agreed between the parties hereto as follows, that is to say:—

1. The several persons parties hereto shall, in reference to the hereditaments comprised in the indentures mentioned in the schedule hereto have all the same powers of leasing as if the said several indentures had been dated and executed after the commencement of the Conveyancing and Law of Property Act, 1881, but so that such powers shall be varied in the following particulars:
2. [*Here add variation clauses as in last precedent, or otherwise as required.*]

In witness &c.

THE SCHEDULE before referred to [*to contain the dates of and parties to incumbrances in the first and second columns respectively, and the signature and seals of incumbrancers in the third column.*]

MORTGAGES.

SECT. IV.

No. XXIX.

RECONVEYANCE.

RE-CONVEYANCE BY SUPPLEMENTAL DEED OF FREEHOLDS, LEASEHOLDS, and COPYHOLDS by the administrator of the survivor of deceased mortgagees.

Parties.

THIS INDENTURE made the &c., between X. of &c. [*administrator of last surviving mortgagee*] of the one part, and A. of &c. [*mortgagor*] of the other part, supplemental to an indenture of mortgage hereinafter called the principal indenture, dated the &c., and made between the said A. of the one part and B. and C. of the other part for securing the payment by the said A. to the said B. and C. of £ and interest:

Recitals.

Deaths of the mortgagees and intestacy of survivor.

Letters of administration.

No surrender of copyholds.

Whereas the said B. died on &c., 1882, and the said C. died on &c., 1883, intestate, and letters of administration to his personal estate were granted to the said X. by the Principal Probate Registry on &c.

And whereas no surrender has been made of the copyhold hereditaments comprised in the principal indenture pursuant to the covenant for that purpose therein contained:

Testatum.

NOW THIS INDENTURE WITNESSETH that in consideration of all money secured by the principal indenture having been paid by A. to X., the receipt whereof X. hereby acknowledges, X. AS THE PERSONAL REPRESENTATIVE of the said C. deceased hereby conveys, surrenders, and releases unto A.

All the freehold and leasehold lands and hereditaments comprised in or which now are by any means vested in X. subject to redemption under the principal indenture,

TO HOLD the said freehold premises unto and to the use of A. in fee simple,

AND AS TO the said leasehold premises to the intent that the residue of the term therein granted by the principal indenture may merge and be extinguished, And that the trust declared by the principal indenture may cease, AND AS TO all the premises discharged from

all money secured by and from all claims under the principal indenture.

AND for the consideration aforesaid, X., AS SUCH PERSONAL REPRESENTATIVE as aforesaid, hereby releases unto A. all the said copyhold hereditaments covenanted to be surrendered by the principal indenture to the intent that the same may be discharged from the said covenant and the trust thereof created by the principal indenture and from all money secured by and from all claims under the principal indenture.

In witness &c.

SETTLEMENTS.
No. XXX.

SECT. V.

SETTLEMENTS.

CONVEYANCE UPON TRUST FOR SALE.

CONVEYANCE OF FREEHOLDS AND COVENANT TO SURRENDER COPYHOLDS BY HUSBAND, upon trust for sale, in contemplation of his marriage.

Parties.

THIS INDENTURE made &c., between A. B. of &c., [*husband*] of the first part, C. D. of &c., spinster [*wife*], of the second part, and W. of &c., X. of &c., M. of &c., and N. of &c. (which four last named persons are hereinafter called the trustees), of the third part

First testatum. Conveyance of freeholds.

WITNESSETH that in pursuance of an agreement made on the treaty for the marriage which has been agreed upon and is intended to be solemnised between A. B. and C. D., and in consideration thereof, A. B. AS SETTLOR, with the approbation of C. D., hereby conveys unto the trustees

All that &c.

Habendum.

TO HOLD unto the trustees in fee simple

To the use of A. B. in fee simple until the said intended marriage shall be solemnized, And after the solemnization thereof To the use of the trustees in fee simple, Upon the trusts hereinafter declared:

Second testatum. Covenant to surrender copyholds.

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and for the consideration aforesaid, A. B. AS SETTLOR, with the approbation of C. D., hereby covenants with the trustees That he and all other necessary parties will forthwith, after the solemnization of the said intended marriage, at the cost of the trust estate surrender into the hands of the lord or lady of the manor of &c. according to the custom thereof,

All that &c. (to which hereditaments the said A. B. was admitted tenant at a Court held of the said manor on the &c.)

Habendum.

TO THE USE of the trustees and their heirs at the accustomed rents, suits, and services:

SETTLEMENTS. No. XXX.

Trusts of freeholds and copyholds.

AND IT IS HEREBY AGREED that the trustees shall after the solemnization of the said intended marriage stand seised of the freehold and copyhold hereditaments hereby conveyed and covenanted to be surrendered Upon trust to sell the same or any part or parts thereof respectively, but during the joint lives [*continue as in Form No.* 16;

Power of leasing for twenty-one years, Form No. 38;

Power for husband and wife and the survivor to appoint new trustees, Form No. 46.]

In witness &c.

Statutory provisions incorporated.

The provisions of the C. A. incorporated in this precedent are powers of sale (ss. 35, 38), power to adopt statutory conditions (ss. 3, 66) (see also V. & P. A. ss. 2, 3), to give receipts (C. A. s. 36), and to appoint new trustees (s. 31), and covenant, s. 7 (1) E. by the intended husband as settlor.

SETTLEMENTS. No. XXXI.

ANTE-NUPTIAL SETTLEMENT by HUSBAND of investments transferred by him, and by WIFE of her shares, under a settlement and will expectant on her father's death; upon trusts for husband and wife successively for life, his interest in the wife's funds being determinable on alienation; trusts for issue of marriage as husband and wife or the survivor shall appoint; in default, for children of the marriage; power to wife to make a settlement on future marriage; agreement to settle other property of wife; covenant by the wife's father to pay an annuity for so much of his life as the wife or any issue of the marriage shall live; powers to invest in the purchase of land generally; also in the purchase of a residence, and other provisions.

Parties.

THIS INDENTURE, made &c., between A. D. of &c., [*the husband*] of the first part, B. E., spinster [*the wife*], a daughter of John E. of &c., of the second part, the said John E. of the third part, and W. of &c., X. of &c., Y. of &c., and Z. of &c. (which four last-named persons are hereinafter called the trustees) of the fourth part.

SETTLEMENTS. No. XXXI.

Recitals. Agreement for marriage.

Whereas a marriage has been agreed upon, and is intended to be solemnised between the said A. D. and B. E.:

Transfer by husband of investments.

And whereas with a view to the settlement intended to be hereby made the said A. D. has caused to be transferred into the joint names of the trustees the investments mentioned in the first schedule hereto, representing the sum of £ sterling:

Title of wife to a third share of investments on death of her father.

And whereas under an indenture dated &c., and made between &c., being a settlement made before and in consideration of the marriage then intended and afterwards solemnised between the said John E. and Mary E. since deceased, and a deed-poll under the hand and seal of the said John E., being a deed of appointment executed under a power contained in the said indenture, the said B. E. as one of the three children of the said John E. by the said Mary E. is now entitled expectant on the death of her father the said John E., and in the meantime subject to his life interest under the said indenture, and provided the now intended marriage shall be solemnised within six calendar months from the date of the said deed-poll, to one-third share of the investments mentioned in the first part of the second schedule hereto, being the investments now held on the trusts of the said indenture of settlement, or of the investments for the time being representing the said investments so now held, which investments so now held are now standing in the joint names of &c., the present trustees of the said indenture:

Title of wife to a third share in proceeds of land and investments on death of her father.

And whereas under the will dated &c., and proved in the District Probate Registry on &c. of , late of &c., who died on &c., the said B. E., as one of the three children of the said John E., is entitled expectant on the death of her father the said John E., and in the meantime subject to his life interest, to one-third share of the proceeds of the sale of the lands and hereditaments and of the income until sold of the lands and hereditaments by the said will devised on trust for sale and now remaining unsold, and of the investments representing

the other real estate, and the residuary personal estate of the said testator now held on the trusts of the said will, and the particulars of which lands, hereditaments, and investments are specified in the second part of the second schedule hereto, and are now vested in or standing in the joint names of &c., the sole acting trustees and executors of the said will:

Agreement for settlement.

And whereas upon the treaty for the said intended marriage it was agreed that such settlement should be executed as hereinafter contained.

First testatum. Declaration of trusts until marriage for husband.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said intended marriage the said A. D., with the privity of the said B. E., hereby directs and the trustees hereby declare and do agree with the other parties hereto that the trustees will stand possessed of the investments mentioned in the first schedule hereto, and so transferred into their joint names as aforesaid, Upon trust for the said A. D. until the said intended marriage, and after the solemnisation thereof Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same.

Second testatum. Assignment of wife's property.

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and in consideration of the said intended marriage the said B. E. AS SETTLOR, with the approbation of the said A. D. hereby assigns, And the said A. D. AS SETTLOR hereby assigns and confirms unto the trustees hereinbefore named

First, All that the one third share to which the said B. E. is now or will on the solemnisation of the said intended marriage become entitled in expectancy as aforesaid of the investments mentioned in the first part of the second schedule hereto:

Secondly, All that the one third share to which the said B. E. is now entitled in expectancy as aforesaid in the proceeds of the sale of the lands and hereditaments and of the investments respectively mentioned in the second part of the said second schedule hereto:

SETTLEMENTS. No. XXXI.

And all other (if any) the share or shares of the said B. E. in the investments or in the lands and hereditaments or in the proceeds of the sale of the lands and hereditaments mentioned in the said second schedule:

Habendum.

In trust for wife until the marriage.

TO HAVE AND RECEIVE the same unto the trustees absolutely, Upon trust for the said B. E. until the said intended marriage, and after the solemnisation thereof Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same:

Trusts as to all property after marriage.

That is to say, IT IS HEREBY AGREED that the trustees shall after the solemnisation of the said intended marriage stand possessed of the investments mentioned in the first schedule hereto, and also of the said shares and premises hereinbefore assigned, as and when the same fall into possession, Upon trust that the trustees, or the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents, hereinafter called the trustees or trustee, shall get in and receive or obtain transfer of the said shares and premises hereinbefore assigned, AND SHALL either permit the investments mentioned in the first schedule hereto, and also so much of the said shares and premises hereby assigned as shall not be received in money, to remain on the securities or investments in which the same now are or shall be received; OR SHALL, with the consent of the said A. D. and B. E. during their joint lives, or of the survivor of them during his or her life, and after the death of both at the discretion of the trustees or trustee, sell, call in, or convert into money all or any of the said investments mentioned in the first schedule hereto, And also so much of the said shares and premises hereby assigned as shall not be received in money, AND SHALL with the like consent or at the like discretion invest the money arising thereby, and also any money received in respect of the said shares and premises hereby assigned, in the names or name of the

To invest and vary investments.

trustees or trustee in manner following, and not otherwise (*a*), that is to say:—

In or upon [*investment clause, Form No.* 18, *ante*]:

Trusts of investments.

AND IT IS HEREBY AGREED that the trustees or trustee shall stand possessed of the investments mentioned in the first schedule hereto, and of the varied investments for the time being representing the same, all of which are hereinafter referred to as the husband's trust fund, And shall also stand possessed of the said shares and premises hereby assigned, and of the investments for the time being representing the same, which shares and premises hereby assigned and the investments representing the same are hereinafter referred to as the wife's trust fund, And also of the annual income of the husband's trust fund and the wife's trust fund respectively, Upon the trusts and subject to the powers and provisions following, that is to say:—

Income of husband's trust fund to him for life, then to wife for life.

AS TO THE HUSBAND'S TRUST FUND, Upon trust to pay the annual income thereof to the said A. D. during his life, and after his death to pay the same annual income to the said B. E. during the residue of her life, if she shall survive him, for her separate use independently of any husband, and without power of anticipation:

Income of wife's trust fund to her for life, then for husband.

AND AS TO THE WIFE'S TRUST FUND, Upon trust to pay the annual income thereof to the said B. E. during her life, for her separate use independently of any husband, and without power of anticipation, And after her death [*Trusts for the inalienable benefit of husband, Form No.* 22.]

After death of survivor for issue.

AND IT IS HEREBY AGREED that after the death of the survivor of the said A. D. and B. E. the capital of the husband's trust fund, and also of the wife's trust fund, shall be held IN TRUST &c.

[*Add trusts for issue as parents or survivor shall appoint,*

Prohibition against mortgages in Ireland or investments under local Acts.

(*a*) The object of these words is to prevent trustees from lending on mortgage in Ireland under 4 & 5 Will. 4, c. 29, and from taking investments which certain local Acts of Parliament authorise trustees to take as investments. Powers of this latter kind in local Acts are not uncommon.

in default for children equally, and hotchpot clause, Form No. 24; and also Form No. 25, if required.

Advancement clause, Form No. 26.

Ultimate trusts.

Ultimate trusts as to husband's trust fund for him, and as to wife's trust fund in trust for her or her next of kin, so as to exclude the husband, Forms No. 28–30.

Power for wife to make a settlement on future marriage, Form No. 33.]

Covenant by wife's father to pay annuity.

AND THIS INDENTURE ALSO WITNESSETH that in consideration of the said intended marriage the said John E. hereby covenants with the trustees, and also as a separate covenant with the said B. E., That if the said intended marriage shall be solemnised the said John E. will during so much of his life as the said B. E. or any of her issue by the said A. D. shall be living, pay to the trustees or trustee the annual sum of £ , such annual sum to commence from the day of the solemnisation of the said intended marriage, and to be deemed to accrue due from day to day, but to be paid by equal half-yearly payments, the first payment to be made at the expiration of six calendar months from the solemnisation of the said intended marriage:

AND IT IS HEREBY AGREED that the trustees or trustee shall pay and apply the said annual sum of £ to the persons and in the manner to whom and in which the annual income of the wife's trust fund would be payable or applicable in case the same had fallen into possession.

[*Agreement to settle other property of wife, Form No. 35.*

Power to invest in the purchase of land, Form No. 36.

Power to invest in the purchase of residence, Form No. 37.

Power to lease, Form No. 38 (applicable to Nos. 35, 36, and 37.

Power to concur in partition of hereditaments in the 2nd Schedule, Form No. 39.]

Powers to permit trustees of recited will to retain investments.

PROVIDED ALSO, and it is hereby agreed, that the trustees or trustee of these presents may permit the trustees or trustee for the time being of the will of the said

to retain any investments mentioned in the second part of the second schedule hereto, and now held on the trusts of that will, although not being investments authorised by the terms of that will, and the trustees and trustee of these presents shall not, unless they or he in their or his absolute discretion think proper, be bound to take any proceedings as to any such investments which are not so authorised, or as to any other investments for the time being held on the trusts of that will, nor be liable in any way for any loss which may occur through investments, proper or otherwise, being retained or made by the trustees or trustee for the time being of that will, or through any act, deed, or omission on the part of such trustees or trustee.

[*Add, if required, powers to trustees to deposit money in bank, Form No.* 40; *to make contributory loans, Form No.* 41; *to make loans for a term, Form No.* 42.

Power to trustees to value and apportion mixed funds, Form No. 43.

Power to trustees to deposit securities to bearer for safe custody (*if any authorised*), *Form No.* 44.

Solicitor trustee to be paid his costs, Form No. 45.

Power to husband and wife and survivor to appoint new trustees, Form No. 46.]

In witness &c.

The FIRST SCHEDULE above referred to.

Investments transferred by the husband.

The SECOND SCHEDULE above referred to.

Part 1.

Investments subject to the settlement dated &c.

Part 2.

Land and investments subject to the will of &c.

Notice of this settlement should be given to the trustees of the recited settlement and will.

SETTLEMENTS. No. XXXI.

What statutory provisions incorporated.

The provisions of the C. A. incorporated in this precedent are powers for maintenance and education of infants and accumulation of surplus income (s. 43); power of sale (ss. 35, 38); power to adopt statutory conditions (ss. 3, 66), (see also V. & P. A. ss. 2 & 3); to give receipts (C. A. s. 36); to compound and compromise (s. 37), and to appoint new trustees (s. 31); and covenant E. s. 7 (1) by the intended wife and the intended husband as settlors.

PURCHASE DEED. No. XXXII.

CONVEYANCE OF A RESIDENCE PURCHASED OUT OF SETTLED MONEY by the Trustees of the Settlement Preced. XXXI. (*a*).

THIS INDENTURE made &c. between H. C. of &c. [*mortgagee*] of the first part, J. C. of &c. [*vendor*] of the second part, A. D. of &c., and B. D. his wife of the third part, and W. of &c., X. of &c., Y. of &c., and Z. of &c. of the fourth part.

Recitals. Mortgage.

Whereas by an indenture of mortgage dated &c., and expressed to be made between the said J. C. of the one part and the said H. C. of the other part, the said J. C. granted the messuage and hereditaments hereinafter described and hereby intended to be conveyed unto and to the use of the said H. C. in fee simple, by way of mortgage for securing payment to the said H. C. by the said J. C. of the sum of £4000 with interest thereon as therein mentioned:

Agreement to purchase from mortgagor.

And whereas the parties hereto of the fourth part have at the request of the said A. D., and B. D., testified by their execution of these presents, agreed to purchase from the said J. C. the said hereditaments and the fee simple thereof in possession, free from incumbrances, at the price of £20,000:

Agreement for concurrence of mortgagee.

And whereas the principal sum of £4000 is still due to the said H. C. upon the hereinbefore recited security, but all interest thereon has been paid, as he hereby

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(*a*) In this precedent the settlement is not recited or made part of the title. It is merely referred to in declaring the trusts of the moneys to arise from the sale of the property under the trust for sale.

acknowledges, and he has agreed upon receiving the said sum to join in these presents as hereinafter appearing :

And whereas it is desired by the parties hereto of the third and fourth parts that the said hereditaments should be conveyed in manner and upon the trusts hereinafter expressed.

Testatum. Conveyance.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £20,000 upon the execution of these presents paid by the said W., X., Y., and Z., as to £4000 part thereof to the said H. C., at the request of the said J. C., testified by his execution hereof (the receipt of which sum of £4000 the said H. C. hereby acknowledges), And as to £16,000 residue thereof to the said J. C. (the receipt of which sum of £16,000, and the payment in manner aforesaid of which sum of £4000, making together the said purchase-money of £20,000, the said J. C. hereby acknowledges), the said H. C. AS MORTGAGEE, and according to his estate, by the direction of the said J. C., hereby conveys and releases, And the said J. C. AS BENEFICIAL OWNER hereby conveys and confirms unto the said W., X., Y. and Z.

All that messuage &c.

Habendum.

TO HOLD unto and to the use of the said W., X., Y., and Z., in fee simple, discharged from all moneys secured by and all claims and demands under the said indenture of mortgage,

Trust for sale.

UPON TRUST to sell the same or any part thereof with the consent in writing of the said A. D. and B. D., during their joint lives, and of the survivor of them during his or her life, and after the death of both at the discretion of the trustees or trustee for the time being of these presents :

Trusts of proceeds of sale.

AND IT IS HEREBY AGREED that the said trustees or trustee shall stand possessed of the net money to arise from any such sale (after payment thereout of all costs incidental thereto) Upon the trusts and subject to the powers and provisions which under an indenture dated &c., and made between &c., being a settlement made on

SETTLEMENTS. No. XXXII.

the marriage then intended and afterwards solemnised between the said A. D. and B. D. [*Preced.* XXXI. *ante*], are declared and now subsisting with respect to money forming part of the husband's trust fund (*a*) thereby settled.

[*Power of leasing for twenty-one years, Form No.* 38, *saying* "the said messuage," &c., *instead of* "any messuages," *&c.*;

Power for A. D. and B. D. and the survivor to appoint new trustees, Form No. 46.]

In witness &c.

SETTLEMENTS. No. XXXIII.

INFANT'S SETTLEMENT.

ANTE-NUPTIAL SETTLEMENT under the INFANTS' SETTLEMENT ACT of the wife's portion raisable under the trusts of a term, and her share of a testator's residuary estate, being administered by the Court; upon trusts for the wife and husband successively for life, and then for the issue of the marriage as husband and wife or the survivor shall appoint; in default for children of the marriage, except an eldest son and any other son who before he attains twenty-one succeeds to a title, unless he shall be the only child: Power to raise money for wife's outfit, and to pay costs of settlement, and of administration action.

Parties.

THIS INDENTURE made the &c., between the Right Honourable A., Lord B. [*husband*], of the first part, C. D., spinster, eldest surviving daughter of the late E. D. deceased, and now an infant of the age of twenty years or thereabouts [*wife*], of the second part, and R. of &c., &c. [*four trustees*], which four last-named persons are hereinafter called the trustees, of the third part.

Recitals.

Whereas a marriage has been agreed upon and is

(*a*) The purchase is, in this and the precedent appointing a new trustee, p. 250, *post*, assumed to have been made wholly out of the husband's trust fund.

intended to be solemnised between the said Lord B. and C. D., with the consent of &c., her testamentary guardians appointed by the will of her father, the said E. D:

Agreement for marriage.

And whereas under the will dated &c., and proved on &c., in the Probate Registry, of the said E. D., who died on &c., and of which will M. and N. are now the sole surviving trustees and executors, the said C. D., as one of the two surviving children of the said E. D. other than the eldest son, will upon her marriage or upon her attaining the age of twenty-one years, which shall first happen, become absolutely entitled to one moiety of a sum of £ raisable under the trusts of a term of five hundred years in the testator's freehold and copyhold estates situated at &c., by his said will limited to the said M. and N. upon trust for raising that sum for portions for the testator's children other than a son or daughter entitled as tenant for life to the said estates, And also to one moiety of the net residue remaining after paying debts and legacies and certain other sums (including the said sum of £) of the money to arise from the sale and conversion of the freehold, copyhold, and leasehold estates of the said testator situated at &c., and of the testator's residuary personal estate, and which freehold, copyhold, leasehold, and personal estate were by the testator's will devised and bequeathed to the said M. and N. and to G., now deceased, upon trust for sale and conversion:

Of wife's title under a will to a portion.

And to a share in the testator's residuary estate.

And whereas in the year 1880 an action of *P.* v. *Q.*, 1880. P. No. , was instituted in the Chancery Division of the High Court of Justice for the administration of the testator's real and personal estate, in which action L. D., the eldest son of the said testator and an infant, by &c., his next friend, was plaintiff, and the said M. and N. were defendants:

Action for the administration of the estate of the testator.

AND WHEREAS a decree was made in the said action on the &c., and the said C. D. has been served with notice of the said decree, and has become bound by the proceedings in the said action:

Decree, and service thereof on wife.

AND WHEREAS the chief clerk has made his certificate

Chief clerk's certificate.

SETTLEMENTS. No. XXXIII.

in the said action, dated the &c., and filed on &c., in which certificate and the schedules thereto the particulars of the said testator's real estate and the liabilities affecting the same are set forth, and by which certificate it appears that the whole of the testator's personal estate has been applied in discharge of liabilities affecting the same:

Order under Infants' Settlement Act.

And whereas by an order of the Chancery Division of the High Court of Justice made on an adjournment into chambers on the day of , in the said action of *P.* v. *Q.*, and in the matter of an Act of the 18th & 19th Vict. c. 43, intituled "An Act to enable Infants, with the Approbation of the Court of Chancery, to make binding Settlements of their Real and Personal Estate on Marriage," Upon the petition of the said C. D. by &c., her next friend, and of the said [*the guardians*], the Judge being of opinion that the proposed marriage of the said infant C. D. with the said Lord B. was a fit and proper marriage for the said infant, and that the settlement proposed to be effected by an indenture of even date herewith and by this indenture was a proper settlement to be made in contemplation of such marriage, and that the indentures therein referred to, being the said indenture of even date herewith and this indenture, were proper indentures for giving effect to such settlement, the said Judge did, pursuant to the aforesaid Act of Parliament, sanction and approve of such settlement, and did order that the said infant should be at liberty in contemplation of her marriage with the said Lord B. to execute the said indentures accordingly, and that upon the due execution of the said indenture of even date herewith and of this indenture by the said Lord B., and the said C. D., the said Lord B. and C. D. should be at liberty to intermarry (*a*).

Settlement approved by the Judge.

And whereas these presents have been approved by

Liberty to marry necessary only in case of wards.

(*a*) The liberty to marry is only necessary where the infant, as in this case, is a ward of Court. Where the application is only under the Act for the purpose of making a settlement binding on the infant, the words "and that upon due execution" &c., may be omitted.

the said Judge, as appears by the signature of the chief clerk in the margin hereof.

NOW THIS INDENTURE WITNESSETH that in obedience to the aforesaid Order of the Chancery Division of the High Court of Justice, and in consideration of the said intended marriage, the said C. D. (*a*), with the privity of the said Lord B., hereby assigns, and the said Lord B. AS SETTLOR hereby assigns and confirms unto the trustees hereinbefore named:

First testatum.

Assignment by wife

First, All that the moiety to which the said C. D. is now, or will upon the solemnization of the said marriage, become entitled as aforesaid in the said sum of £ , raisable for portions under the trusts of the aforesaid term of five hundred years in the said estates at &c., devised by the will of the said E. D.;

of her share in portion

Secondly, All that the moiety to which the said C. D. is now or will upon the solemnization of the said marriage become entitled as aforesaid of the net residue of the money to arise from the sale and conversion of the freehold, copyhold, and leasehold estates of the said testator at &c., and of the testator's residuary personal estate (if any):

and in estate of testator;

And also all arrears of income which on the day of the solemnization of the said marriage shall be due to the said C. D. in respect of the said shares and premises hereby assigned, and so that such arrears of income shall, as from the day of the said marriage, merge in and be added to and considered as part of the capital of the said shares and premises hereby assigned,

and all arrear of income due so as to be capitalised.

TO HAVE AND RECEIVE the premises unto the trustees upon trust for the said C. D. until the said intended marriage, and after the solemnization thereof upon the trusts hereinafter declared concerning the same.

Habendum.

Upon trust for wife until the marriage.

AND THIS INDENTURE ALSO WITNESSETH that in obedience to the said order, and in consideration of the said

Second testatum.

Trusts after marriage.

(*a*) The Court can, under the Act, enable the infant to assign, but, it is conceived, cannot enable the infant to give a mere covenant, therefore she is not made to assign AS SETTLOR.

SETTLEMENTS. No. XXXIII.

intended marriage, the said C. D. and Lord B. hereby direct, and the trustees hereby declare and do agree with the other parties hereto, That the trustees will after the solemnization of the said intended marriage stand possessed of the said shares, arrears of income, and premises hereinbefore assigned to them Upon the trusts following, (that is to say,)

For investment and varying investments.

Upon trust that the trustees or the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents, hereinafter called the trustees or trustee, shall either permit the said shares, arrears of income, and premises hereinbefore assigned, or any part thereof, to remain in their present investments or condition, or shall as soon as convenient obtain payment or transfer of the moneys or investments representing the premises or any of them, or any part or parts thereof, when and as the same shall respectively become payable or transferable, and as regards investments of which transfer shall be so obtained, shall either retain the same or shall, with the consent of the said Lord B. and C. D. during their joint lives, or of the survivor of them during his or her life, and after the death of the survivor at the discretion of the trustees or trustee, sell, call in, or convert into money the same or any of them, and shall with the like consent or at the like discretion invest the money arising thereby, and also any money received in respect of the premises, in the names or name of the trustees or trustee.

In or upon [*Investment Clause, Form No.* 18.]

AND IT IS HEREBY AGREED that the trustees or trustee shall stand possessed of the premises hereinbefore assigned, or the investments representing the same, hereinafter called the trust fund, and of the annual income thereof, Upon the trusts following, (that is to say,)

Trusts to pay income to wife for her separate use for her life, and then to husband for his life.

[*Trust for wife for life, and then for husband for life, Form No.* 21.]

And after the death of the survivor of the said C. D. and Lord B., IT IS HEREBY AGREED that the capital of the trust fund shall be held In trust for [*issue of mar-*

riage, as husband and wife or survivor shall appoint, from Form No. 24.]

Then for issue of marriage as husband and wife or survivor shall appoint.

And in default of and until and subject to any such appointment, In trust for all or any of the children of the said intended marriage (except an eldest or only son, and except any other son who before attaining the age of twenty-one years shall succeed to the title of Baron B.), who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry under it, and if more than one in equal shares; and if there should be no child who attains a vested interest under the aforesaid trust in default of appointment, then In trust absolutely for the first or only son (if any) of the said intended marriage who attains the age of twenty-one years and also succeeds to the title of Baron B.

In default of appointment to all children of marriage, except son, succeeding to title. If he is only child, then for him.

[*Hotchpot clause from Form No.* 24.

Advancement clause, Form No. 26.]

Trust in default of children for wife.

AND IT IS HEREBY AGREED that if there shall be no child of the said intended marriage who attains a vested interest under the trusts in default of appointment hereinbefore contained, then subject to the trusts and powers herein contained, the trust fund, and the income and statutory accumulations (if any) of the income thereof, or so much thereof respectively as shall not have become vested or been applied under any trust or power herein contained or under any statutory power, shall after the death of the said [*husband*], and such failure of children as aforesaid, be held In trust [*trusts of the wife's trust fund, Form No.* 30, *but say*, the trust fund, *instead of* the wife's trust fund].

Direction to raise money for the outfit of wife, and costs.

PROVIDED always, and it is hereby agreed, that the trustees or trustee shall after the solemnization of the said marriage, out of the trust funds coming to their hands under these presents, raise the following sums and apply or pay the same as hereinafter mentioned, (that is to say,)

First, the trustees or trustee shall and they or he are hereby required to raise a sum of £ and to pay the same to the aforesaid guardians of the said C. D. or the survivor of them, to be by them or him applied in

SETTLEMENTS. No. XXXIII.

discharging the cost of the outfit of the said C. D. preparatory to her marriage, and all liabilities connected therewith, and the surplus (if any) of the said sum of £ , after answering the purposes aforesaid, shall be paid by the said guardians or guardian to the said C. D. for her separate use, but the receipt of the said guardians or guardian shall be a complete discharge to the trustees or trustee for the said sum of £ .

Secondly, the trustees or trustee shall and they or he are hereby required to raise such sum as they or he shall deem proper for the purpose of discharging the costs and expenses of all parties of and incidental to the preparation, execution, and completion of these presents, and the hereinbefore mentioned indenture of even date herewith, and of and incidental to any proceedings in the said action of *P.* v. *Q.* with reference thereto or to the said marriage, and the statement in writing of the trustees or trustee as to the amount of all such costs and expenses shall be conclusive that the amount mentioned in such statement is the proper amount, and shall be binding on all persons claiming under these presents, And the amount so to be raised as aforesaid shall be applied by the trustees or trustee in discharge of the costs and expenses aforesaid.

Statement in writing as to amount to be conclusive.

[*Add power for wife to make a settlement on future marriage, Form No.* 33; *Agreement to settle other property of wife, Form No.* 35; *Power to husband and wife and survivor to appoint new trustees, Form No.* 46; *and other powers and provisions required, from Preced. XXXI. ante.*]

In witness &c.

No. XXXIV.

ANTE-NUPTIAL SETTLEMENT OF POLICY ON HUSBAND'S LIFE. (*Witnessing part.*)

Policy on husband's life.

[*Prior witnessing parts of settlement by husband of the husband's trust fund, and by wife of the wife's trust fund, as in Preced. XXXI.; or witnessing part of settlement by wife of the trust fund, her settled fund being the only fund settled and so called, as in Preced. XXXIII.*]

Assignment of policy on husband's life.

AND THIS INDENTURE ALSO WITNESSETH that in consideration of the said intended marriage the said [*husband*] AS SETTLOR hereby assigns unto the trustees

ALL THAT POLICY of assurance effected in his own name and on his own life for the sum of £ with the Insurance Company, dated the day of , numbered , and at the annual premium of £ , and the said sum of £ and all other money to become payable thereunder:

TO HOLD to the trustees upon trust as soon as may be after the death of the said [*husband*] to get in and receive the money thereby assured, and stand possessed of the net residue thereof after discharging all costs and expenses of recovering and receiving the same, UPON THE TRUSTS, and subject to the powers and provisions hereinbefore declared concerning money forming part of the husband's trust fund [*or if there be no such fund settled, say*, the trust fund in favour of the said [*wife*] and the issue of the said intended marriage, but with this variation (*a*), That if there should be no child of the said intended marriage who attains a vested interest under the trusts hereinbefore contained in default of any appointment by the husband and wife, or the survivor of them, then subject to the trusts and powers herein contained, the said policy or the money received thereunder and the investments representing such money and the income and statutory accumulations (if any) of the income thereof, or so much thereof respectively as shall not have become vested or been applied under any trust or power hereinbefore contained or under any statutory power, shall be held in trust for [*husband*] absolutely.]

[*Add covenant by husband to keep up policy, Form No.* 34.]

(*a*) This variation applies only if there is no husband's trust fund settled.

Notice of this assignment should be given to the Insurance Company.

SETTLEMENTS. No. XXXV.

TRANSFER OF MORTGAGE.

TRANSFER of a MORTGAGE in contemplation of the marriage of the mortgagee.

Parties.

THIS INDENTURE [*indorsed* (*a*) *on a mortgage dated &c.*, 1880, *to secure to the intended wife, then F. B.*, £3000 *and interest*] made the &c., between the within named F. B. [*wife*] of the first part, D. D. of &c. [*husband*] of the second part, and Sir F. B. of &c., Baronet, Arthur D. of &c., and H. D. B. of &c., which three last named persons are hereinafter called the trustees, of the third part:

Recitals. Intended marriage.

Whereas a marriage has been agreed on and is intended to be solemnized between the said F. B. and D. D.:

That mortgage debt still due with interest.

And whereas the within mentioned sum of £3000 with the current half-year's interest thereon, is owing to the said F. B. on the security of the within written indenture:

Agreement for transfer.

And whereas upon the treaty for the said marriage it was agreed that the said sum of £3000 and the interest thereon, and the securities for the same, should be transferred to the trustees upon the trusts and under and subject to the powers and provisions hereinafter contained or referred to.

First testatum.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the said intended marriage, the said F. B., AS MORTGAGEE, with the approbation of the said D. D., hereby assigns,

ALL that the principal sum of £3000 so owing to the said F. B. on the security of the within written indenture, and all interest due and to become due thereon, and the benefit of, and the right to exercise and enforce, all powers and securities for compelling payment of the same:

When transfers may be by supplemental, or indorsed deed.

(*a*) Transfers of mortgages to trustees, as in the case in the text, or on the appointment of new, or the retirement and discharge of old, trustees, may be made by indorsement where circumstances admit, since no money passes, but if a transfer has to be sent to different places for execution it is safer to effect it by supplemental deed than risk the loss of the mortgage deed.

TO HOLD unto the trustees IN TRUST for the said F. B. until the said intended marriage, and after the solemnization thereof UPON THE TRUSTS and under and subject to the powers and provisions declared concerning the same by an indenture intended to bear even date herewith and to be made between &c. [*the marriage settlement.*] Habendum.

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement, and for the consideration aforesaid, the said F. B. AS MORTGAGEE, with the approbation of the said D. D., hereby conveys unto the trustees Second testatum.

ALL the messuages, lands, and hereditaments comprised in and conveyed by the within written indenture, Habendum.

TO HOLD unto and to the use of the trustees in fee simple, subject to the right of redemption subsisting under the within written indenture on payment of the said sum of £3000 and the interest thereon:

AND IT IS HEREBY DECLARED that the power of appointing new trustees of these presents shall be exercisable by the said D. D. and F. B. during their joint lives, and by the survivor of them during his or her life. Power to appoint new trustees.

In witness, &c.

This transfer is an independent trust deed, and contains a separate power to appoint new trustees, so that the settlement is not brought on the title to the estate. The money, being settled upon trusts, is necessarily held by the trustees on a joint account. If the transfer were after the settlement, to secure settlement money, it should be a transfer to the transferees on a joint account, without disclosing the trusts.

This being a mere transfer of mortgage no covenant is required except by the wife as mortgagee.

NEW TRUSTEES. No. XXXVI.

SECT. VI.

APPOINTMENT, RETIREMENT, AND DISCHARGE OF TRUSTEES.

APPOINTMENT by Supplemental Deed of NEW TRUSTEES of the Settlement, *Preced. XXXI. ante*, under C. A. s. 31; and DECLARATION VESTING the RIGHT TO RECOVER part of the trust property under C. A. s. 34 (1).

Parties.

THIS INDENTURE made &c., between A. D. of &c., and B. D. his wife [*donees of the power*] of the first part, M. of &c., and N. of &c. [*the new trustees*] of the second part, and Y. of &c., Z. of &c. [*the continuing trustees*], and the said M. and N. of the third part, and supplemental to an indenture dated &c., and made between &c. hereinafter called the principal indenture (being a settlement made previously to the marriage then intended and since solemnized between the said A. D. and B. D.) [*Preced. XXXI. ante*] and of which principal indenture W. and X., and the said Y. and Z are the trustees:

Recitals. Of purchase of a residence,

Whereas the sum of £ , being money representing part of the husband's fund settled by the principal indenture, has been sold and has been invested under a power for that purpose therein contained, in the purchase and in defraying the costs of the purchase of a messuage and hereditaments situated at &c., and which by an indenture dated &c. were conveyed to the trustees of the principal indenture upon trust for sale, and for disposition of the net proceeds of sale in accordance with the terms of that indenture [*Preced. XXXII.*]:

What the residue consists of,

And whereas the investments representing the residue of the husband's trust fund now consist of the investments mentioned in the schedule hereto standing in the joint names of the same trustees:

Wife's trust fund not in possession:

And whereas no part of the wife's trust fund settled by the principal indenture has yet fallen into possession:

W. resident abroad,

And whereas the said W. has been resident out of

the United Kingdom for more than twelve calendar months (*a*):

And whereas the said X. is now a person of unsound mind, duly found so by inquisition:

X. a lunatic.

And whereas the said A. D. and B. D. are desirous of appointing the said M. and N. to be trustees of the principal indenture in the place of the said W. and X.:

Intention to appoint new trustees and transfer investments:

And whereas it is intended that as soon as may be after the execution of these presents the investments mentioned in the schedule hereto shall be transferred (*b*) into the joint names of the said Y., Z., M., and N. as trustees of the principal indenture:

Intention to appoint new trustees of residence purchased.

And whereas it is also intended that by an indenture bearing even date herewith and made between the same parties and in the same order and supplemental to the said indenture of &c. [*the conveyance of the residence, Preced. XXXII.*], the said M. and N. shall under a power for the purpose contained in the same indenture be appointed trustees thereof in the place of the said W. and X., and that the said indenture of even date shall contain the proper declaration for vesting in the said Y., Z., M. and N. the messuage and hereditaments comprised in the said indenture to which it is to be supplemental:

First testatum. Appointment of new trustee.

NOW THIS INDENTURE WITNESSETH that the said A. D. and B. D. in exercise of the power for this purpose given to them by the principal indenture and of every other power enabling them, hereby appoint the said M. and N. to be trustees of the principal indenture in the place of the said W. and X., and jointly with the said Y. and Z. for all the purposes of the principal indenture.

Second testatum. Declaration vesting right to chattels &c.

AND THIS INDENTURE ALSO WITNESSETH that the said A. D. and B. D., with the assent of the said Y. and Z., hereby declare that all chattels and also the right to recover and receive all debts and other things in action subject to the trusts of the principal indenture, shall

(*a*) Evidence of this fact should be obtained and preserved.

(*b*) As to the necessity for these transfers, see C. A. s. 34 (3).

NEW TRUSTEES. No. XXXVI.

forthwith vest in the said Y., Z., M., and N. as trustees of the principal indenture and as joint tenants for the purposes and upon the trusts thereof. In witness, &c.

THE SCHEDULE ABOVE REFERRED TO.

(List of investments representing the husband's trust fund other than the messuage and lands purchased.)

No declaration of trust necessary.

It is unnecessary now to add a declaration of trust of the stocks and shares to be transferred. The only object of that trust formerly was to make a debt by breach of trust a specialty debt. Now by statute 32 & 33 Vict. c. 46, specialty debts have no priority.

Execution by W. or application in lunacy unnecessary

The effect of the declaration as to vesting is to make it unnecessary to send the deed abroad for execution by W., or to apply in the lunacy of X. for a vesting order, but the transfer of copyholds or mortgages or stocks or shares must be obtained as before the C. A., see s. 34 (3).

Assent of continuing trustees not necessary.

The assent of the continuing trustees to the declaration on the appointment of new trustees is not required by the Act, but it is desirable to shew by the deed that they do assent.

No. XXXVII.

APPOINTMENT by Supplemental Deed of NEW TRUSTEES of the RESIDENCE purchased by Settlement Trustees [*Preced.* XXXII. *ante*]; and DECLARATION VESTING it under C. A. s. 34 (1).

Parties.

THIS INDENTURE made &c., between &c. [*the same date and parties as last Precedent*], and supplemental to an indenture hereinafter called the principal indenture, dated &c. and made &c., whereby a messuage and hereditaments situated at &c. were conveyed to the said W., X., Y., and Z. as trustees upon trust for sale [*Precedent* XXXII.]

Recitals. W. resident abroad, X. a lunatic.

Whereas the said W. has been resident out of the United Kingdom for more than twelve calendar months:

And whereas the said X. is now a person of unsound mind, duly found so by inquisition:

And whereas the said A. D. and B. D. are desirous of appointing the said M. and N. to be trustees of the principal indenture in place of the said W. and X.

First testatum. Appointment of new trustees.

NOW THIS INDENTURE WITNESSETH that the said A. D. and B. D., in exercise of the power for this purpose given to them by the principal indenture and of every other

power enabling them, hereby appoint the said M. and N. to be trustees of the principal indenture in the place of the said W. and X. and jointly with the said Y. and Z. for all the purposes of the principal indenture.

NEW TRUSTEES. No. XXXVII.

AND THIS INDENTURE ALSO WITNESSETH that the said A. D. and B. D., with the assent of the said Y. and Z., hereby declare that all the estate and interest of the said W., X., Y., and Z. and each of them, in the messuage and hereditaments now subject to the trusts of the principal indenture shall forthwith vest in the said Y., Z., M., N. as trustees of the principal indenture and as joint tenants for the purposes and upon the trusts thereof. In witness &c.

Second testatum. Declaration as to vesting.

The effect of this declaration is to make it unnecessary to send abroad the conveyance for execution by W., or to apply in the lunacy of X. for a vesting order.

Execution by X. or application in lunacy unnecessary.

If the property is within any registry district the deed must be registered there: C. A. s. 34 (4).

Registration.

As to the assent of the continuing trustees, see n. to last precedent.

APPOINTMENT OF A NEW TRUSTEE of the MORTGAGE DEBT settled by Precedent XXXV., and TRANSFER of the MORTGAGE, the trusts being disclosed.

No. XXXVIII.

NEW TRUSTEE OF A MORTGAGE DEBT AND TRANSFER OF MORTGAGE.

THIS INDENTURE made &c. between D. D. of &c. and F. D. his wife [*donees of power*] of the first part, H. D. B. of &c. [*retiring trustee*] of the second part, X. of &c. [*new trustee*] of the third part, and Sir F. B. of &c. Bart. A. D. of &c. [*continuing trustees*], and the said X. of the fourth part:

Parties.

Whereas this indenture is supplemental to an indenture of transfer of mortgage hereinafter called the principal indenture dated &c., and made between the said F. D., then F. B., of the first part &c. [*the settlement of the mortgage debt of* £3000, *Preced. XXXV.*], for securing the payment to the parties thereto of the third part the principal sum of £3000 and interest, and indorsed on an indenture of mortgage dated &c. 1880, and made between &c.:

Recitals that the deed is supplemental to transfer of mortgage.

NEW TRUSTEES.
No. XXXVIII

That principal sum and interest still due.

And whereas the said sum of £3000 secured by the principal indenture, with the current interest thereon, is still due to the said Sir F. B., A. D. and H. D. B. upon the security of the principal indenture:

Desire of trustee to be discharged.

And whereas the said H. D. B. is desirous of being discharged from the trusts of the principal indenture, and the said D. D. and B. D. are desirous of appointing the said X. in his place as trustee thereof:

First testatum. Appointment of new trustee.

NOW THIS INDENTURE WITNESSETH [*appointment by D. D. and B. D. of X. in the place of H. B. D., adapting the last Precedent*]:

Second testatum. Assignment of mortgage debt.

AND THIS INDENTURE ALSO WITNESSETH that the said Sir F. B., A. D. and H. D. B. AS TRUSTEES hereby assign unto Sir F. B., A. D. and X.

All that the principal sum of £3000 now owing on the security of the principal indenture, and all interest due and to become due thereon, and the full benefit of and the right to exercise and enforce all powers and securities for compelling payment of the said sum and interest;

Habendum.

TO HAVE AND RECEIVE the same unto the said Sir F. B., A. D., and X.

Upon the trusts by the principal indenture declared or referred to concerning the same;

Third testatum. Conveyance.

AND THIS INDENTURE ALSO WITNESSETH that the said Sir F. B., A. D., and H. D. B., AS TRUSTEES, hereby convey unto the said Sir F. B., A. D., and X.

All the hereditaments comprised in and conveyed by the said indenture of mortgage of &c. 1880, and the principal indenture:

Habendum.

TO HOLD unto and to the use of the said Sir F. B., A. D., and X. in fee simple Subject to the right of redemption subsisting therein on payment of the said sum of £3000, and the interest thereon.

In witness &c.

The transfers of mortgages in this and the next precedent are necessary because a vesting declaration under C. A. s. 34, does not apply to mortgages: see subs. 3.

TRANSFER OF A MORTGAGE on the appointment of a new trustee, the trust not being disclosed.

NEW TRUSTEES. No. XXXIX.

TRANSFER OF MORTGAGE.

THIS INDENTURE made &c., between H. B. of &c., M. D. of &c., and D. B. of &c., hereinafter called the mortgagees, of the one part, and R. P. of &c., A. S. of &c., and X. of &c., hereinafter called the transferees, of the other part, supplemental to an indenture of mortgage, hereinafter called the principal indenture, dated &c., and made &c. for securing to the mortgagees the sum of £5000 and interest on property situated at &c.

Parties.

Whereas the said sum of £5000 is still due on the security of the principal indenture with the current half-year's interest thereon, which sum and the interest now belong to the transferees on a joint account.

Recital that money still due on the mortgage and belongs to the transferees.

NOW THIS INDENTURE WITNESSETH that in consideration of the premises the mortgagees, AS MORTGAGEES, hereby assign unto the transferees

First testatum. Assignment of debt.

All that the sum of £5000 now owing on the principal indenture, and all interest due and to become due thereon, and the full benefit of and the right to exercise and enforce all powers and securities for compelling payment of the said sum and interest;

TO HAVE AND RECEIVE the same unto the transferees absolutely on a joint account.

Habendum.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the mortgagees, AS MORTGAGEES, hereby convey unto the transferees:

Second testatum. Conveyance.

All the hereditaments comprised in and conveyed by the principal indenture,

TO HOLD unto and to the use of the transferees in fee simple, Subject to the right of redemption subsisting therein on payment of the said sum of £5000 and the interest thereon.

In witness &c.

RETIREMENT AND DISCHARGE of a Trustee under C. A. s. 32; and DECLARATION VESTING the RIGHT TO RECOVER part of the trust property in the continuing trustees alone under s. 34 (2); by deed supple-

RETIREMENT AND DISCHARGE OF TRUSTEES. No. XL.

RETIREMENT AND DISCHARGE OF TRUSTEES.

No. XL.

mental to the Settlement, *Preced. XXXI. ante*, and to the appointment of new trustees thereof, *Preced. XXXVI.*

Parties.

THIS INDENTURE made &c. between A. D. of &c. and B. D. his wife [*donees of power*] of the first part, Y. of &c. [*retiring trustee*] of the second part, and Z. of &c., M. of &c., and N. of &c. [*continuing trustees*] of the third part, and supplemental to an indenture hereinafter called the principal indenture, dated &c., and made between &c., being a settlement made previously to the marriage then intended and since solemnised between the said A. D. and B. D. [*Preced.* XXXI.], and of which principal indenture the said W., X., Y., and Z. were trustees, and also supplemental to another indenture, itself supplemental to the principal indenture, and hereinafter called the supplemental indenture, dated &c., and made between &c., being an appointment of the said M. and N. as trustees of the principal indenture, in place of the said W. and X. [*Preced.* XXXVI.]

Recitals.

State of settled property.

Whereas the husband's trust fund other than the messuage and hereditaments purchased as mentioned in the supplemental indenture, and other than the sum of cash hereinafter mentioned, now consists of the investments mentioned in the first part of the schedule hereto, and the second part of the same schedule contains a debtor and creditor account shewing the sales and investments made and the receipts and payments of the trustees in respect of the capital of the said trust fund (*a*); and by such account it appears that there is now a balance of £ cash in the hands of the trustees, standing to their credit at the bank:

And whereas the wife's trust fund has not fallen into possession:

Desire of trustee to be discharged.

And whereas the said Y. is desirous of being discharged from the trusts of the principal indenture:

Intention to transfer investments and cash, and to vest the residence.

And whereas it is intended that immediately after the execution of these presents the investments mentioned in the first part of the schedule hereto, and the

(*a*) This is a better mode of shewing the dealings than recitals.

said cash balance, shall be transferred into the joint names of the said Z., M., and N. alone:

And whereas it is also intended that by an indenture bearing even date herewith, and made between the same parties, and in the same order, and supplemental to the conveyance of the aforesaid messuage and hereditaments and to the indenture appointing the said M. and N. to be trustees thereof in place of the said W. and X., the said Y. shall be also discharged from being trustee of the said messuage and hereditaments, and the same shall be vested in the said Z., M., and N. alone as joint tenants and trustees thereof [*next Preced.*]:

First testatum. Desire to be discharged.

NOW THIS INDENTURE WITNESSETH that the said Y. by this deed declares that he is desirous of being discharged from the trusts of the principal indenture.

Consent to the discharge.

AND THIS INDENTURE FURTHER WITNESSETH that the said A. D., B. D., Z., M., and N. hereby consent to the discharge of the said Y. from the trusts aforesaid, And to the vesting in the said Z., M., and N. alone of the trust property.

Third testatum. Declaration vesting the right to recover chattels and choses in action.

AND THIS INDENTURE ALSO WITNESSETH that all the parties hereto do and each of them doth hereby declare That all chattels, and also the right of the said Y., Z., M., and N. to recover and receive all debts and things in action subject to the trusts of the principal indenture, shall forthwith vest in the said Z., M., and N. alone as trustees of the principal indenture and as joint tenants for the purposes and upon the trusts thereof.

In witness &c.

THE SCHEDULE ABOVE REFERRED TO.

Part 1.

Investments representing the part of the husband's trust fund not invested in the purchase of a residence, and not represented by the cash balance appearing by Part 2.

Part 2.

Debtor and creditor account.

Retirement and Discharge of Trustee. No. XLI.

RETIREMENT AND DISCHARGE of a Trustee of the RESIDENCE purchased by Settlement Trustees, *Preced.* XXXII. and DECLARATION VESTING it in the continuing trustees alone;

Parties.

THIS INDENTURE made &c. [*same date and parties as the last Precedent.*]

Recitals that deed is supplemental.

Whereas these presents are supplemental to an indenture hereinafter called the principal indenture, dated &c., and made &c., whereby a messuage and hereditaments situated at &c., were conveyed to the said W., X., Y., and Z., as trustees upon trust for sale [*Preced.* XXXII.] And also supplemental to an indenture, itself supplemental to the principal indenture, dated &c., and made &c., whereby the said M. and N. were appointed new trustees of the principal indenture in place of the said W. and X. [*Preced.* XXXVII.]:

Desire of trustee to be discharged.

And whereas Y. is desirous of being discharged from the trusts of the principal indenture,

First testatum. Declaration of desire to be discharged.

NOW THIS INDENTURE WITNESSETH that Y. by this deed declares that he is desirous of being discharged from the trusts of the principal indenture.

Second testatum. Consent to the discharge.

AND THIS INDENTURE FURTHER WITNESSETH that A. D., B. D., Z., M., and N. hereby consent to the discharge of Y. from the trusts aforesaid, and to the vesting in Z., M., and N. alone of the trust property:

Third testatum. Declaration as to vesting.

AND THIS INDENTURE ALSO WITNESSETH that all the parties hereto do and each of them doth hereby declare that all the estate and interest of the said Y., Z., M., and N., and each of them in the messuage and hereditaments now subject to the trusts of the principal indenture shall forthwith vest in the said Z., M., and N. alone as trustees of the principal indenture and as joint tenants for the purposes and upon the trusts thereof.

In witness &c.

RETIREMENT and DISCHARGE of a Trustee of the FREEHOLDS and COPYHOLDS settled in trust for sale previous to Marriage, *Preced. XXX.*; And DECLARATION VESTING the FREEHOLDS and the RIGHT TO SUE on the COVENANT to surrender the COPYHOLDS in the continuing trustees alone.

RETIREMENT AND DISCHARGE OF TRUSTEES. No. XLII.

THIS INDENTURE made &c., between A. B. of &c., and C. B. his wife [*donees of power*] of the first part, X. of &c. [*retiring trustee*], of the second part, and W. of &c., M. of &c., and N. of &c. [*continuing trustees*] of the third part, and supplemental to an indenture dated &c., whereby freehold hereditaments situated at &c., and copyhold hereditaments situated at &c., were conveyed and covenanted to be surrendered respectively to the said W., X., M., and N. as trustees upon trust for sale:

Parties.

[*Recite desire of X. to be discharged, and adapt 1st and 2nd witnessing parts of the last Precedent.*]

AND THIS INDENTURE ALSO WITNESSETH that all the parties hereto do and each of them doth hereby declare That all the freehold hereditaments comprised in the principal indenture shall forthwith vest in the said W., M., and N., alone in fee simple (*a*) as trustees of the principal indenture and as joint tenants,

Third testatum. Declaration as to vesting and right to sue under covenant to surrender.

AND that the right to sue on the covenant contained in the principal indenture to surrender the copyhold hereditaments now subject to the trusts of the principal indenture shall vest in the same three persons absolutely.

In witness &c.

RELEASE OF MORTGAGE settled by *Preced. XXXV.*, on the retirement and discharge of a trustee, the trust being disclosed.

No XLIII.

RELEASE OF MORTGAGE.

THIS INDENTURE made &c., between D. D. of &c. and F. D. his wife [*donees of power*], of the first part, X. of

Parties.

(*a*) The words of this declaration of vesting the freeholds differ from those used in preceding Precedents, and are given as another illustration of a declaration under s. 34 of the C. A.

RETIREMENT AND DISCHARGE OF TRUSTEES.

No. XLIII.

&c. [*retiring trustee*] of the second part, and Sir F. B. of &c., Bart., and A. D. of &c. [*continuing trustees*] of the third part.

Recitals. That the deed is supplemental to a transfer.

Whereas this indenture is supplemental to an indenture of transfer of mortgage hereinafter called the principal indenture dated &c., and made between the said F. D., then F. B., of the first part, the said D. D. of the second part, and the said Sir F. B., A. D., and H. D. B. of the third part, for securing the payment to the parties thereto of the third part of the principal sum of £3000 and interest [*Preced. XXXV.*], and indorsed on an indenture of mortgage dated &c. 1880, and made between &c., and supplemental also to an indenture itself supplemental to the principal indenture, and hereinafter called the supplemental indenture, dated &c., and made &c., whereby the said X. was appointed a new trustee of the principal indenture in the place of the said H. D. B. [*Preced. XXXVIII.*]:

That mortgage debt due.

And whereas the said sum of £3000, with the current half-year's interest thereon, is still due to the said Sir F. B., A. D., and X. upon the security of the principal indenture and the supplemental indenture:

And whereas the said X. is desirous of being discharged from the trusts of the principal indenture:

First testatum. Desire to be discharged.

NOW THIS INDENTURE WITNESSETH [*adapt first and second witnessing parts of Preced. XLI.*]

Second testatum. Consent to discharge.

AND THIS INDENTURE ALSO WITNESSETH that for effectuating the said desire X., AS MORTGAGEE, hereby assigns and releases unto Sir F. B. and A. D.

Third testatum. Assignment of debt.

All that the principal sum of £3000 now owing on the security of the principal indenture and the supplemental indenture, and all interest due and to become due thereon,

Habendum.

TO HAVE AND RECEIVE the same unto the said Sir F. B. and A. D. absolutely:

Fourth testatum. Conveyance.

AND THIS INDENTURE ALSO WITNESSETH that for further effectuating the said desire the said X., AS MORTGAGEE, hereby conveys and releases unto the said Sir F. B. and A. D. all the hereditaments comprised in and conveyed by the said indenture of mortgage of

&c., 1880, and the principal indenture and the supplemental indenture, and which are now vested in the said Sir F. B., A. D., and X., under the same indentures,

RETIREMENT AND DISCHARGE OF TRUSTEES.

No. XLIII.

To HOLD unto and to the use of the said Sir F. B. and A. D. in fee simple, subject to the right of redemption subsisting therein, on payment of the said sum of £3000 and the interest thereon.

Habendum.

In witness &c

RELEASE TO CONTINUING TRUSTEES OF MORTGAGE on the retirement and discharge of one trustee, the trust not being disclosed.

No. XLIV.

RELEASE OF MORTGAGE.

THIS INDENTURE made &c. between X. of &c. of the one part and R. P. of &c., and A. S. of &c of the other part:

Parties.

WHEREAS these presents are supplemental to an indenture of mortgage hereinafter called the principal indenture, dated, &c., and made between &c. for securing the sum of £5000 and interest on property situated at &c., and supplemental also to an indenture of transfer, itself supplemental to the principal indenture, and hereinafter called the supplemental indenture, dated &c., and made between &c., whereby the said sum of £5000 and interest and the securities for the same were transfered to the said R. P., A. S., and X. [*Preced. XXXIX.*]

Recitals. That deed supplemental to mortgage and transfer.

And whereas the said sum of £5000 with the current half year's interest thereon is still due on the security of the principal indenture and the supplemental indenture, and the same sum and the interest thereon now belong to the said R. P. and A. S. solely on a joint account.

That debt still due.

And now belongs to R. P. and A. S. solely.

NOW THIS INDENTURE WITNESSETH that in consideration of the premises the said X. as MORTGAGEE hereby assigns and releases unto the said R. P. and A. S.

First testatum. Assignment of debt.

All that the principal sum of £5000 owing on the securities of the principal indenture and the supplemental indenture, and all interest due and henceforth to become

RETIREMENT AND DISCHARGE OF TRUSTEES.

No. XLIV.

due thereon, To have and receive the same to the said R. P. and A. S. absolutely on a joint account.

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said X. AS MORTGAGEE hereby conveys and releases unto the said R. P. and A. S.

Second testatum. Conveyance.

All the hereditaments comprised in and conveyed by the principal indenture and the supplemental indenture, and which are now vested in the said R. P., A. S., and X. under the same indenture.

Habendum.

TO HOLD unto and to the use of the said R. P. and A. S. in fee simple, subject to such right of redemption as is subsisting therein on payment of the said sum of £5000 and the interest thereon.

In witness &c.

SECT. VII.

WILLS.

WILL of a Married Man bequeathing Furniture, &c., to Wife, charitable and other legacies, an annuity, and a sum to one for life, with remainder to his issue *per stirpes;* general devise and bequest of real and residuary personal estate upon trust for sale and conversion; for investment of proceeds and payment of income to wife during widowhood, with remainder to testator's issue as wife shall appoint, in default, to children equally; advancement and other clauses, and settlement of daughters' shares, and giving them power to appoint life interests to surviving husbands.

I &c. [*Commencement of will, Form* 47;

Appointment of executors and trustees, and legacy to each for acting, Form No. 49;

Appointment of guardians, Form No. 50;

Confirmation of testator's marriage settlement, Form No. 51;

Bequest to wife of furniture, &c., Form No. 52;

Legacies to charities and servants, Forms Nos. 53 *and* 54.

Bequest of annuity, Form No. 56;

Bequest to A. for life, and then to his issue per stirpes, Form No. 58;

Direction that in default of issue of A., legacy shall fall into residue, Form No. 59;

Direction that legacies and annuity be paid free of legacy duty, Form No. 60;

General devise and bequest of real and personal estate upon trust to sell, pay debts, legacies, &c., and invest the residue, Forms No. 61 *and* 18;

Trusts of investments, to pay income to wife during her widowhood (or for her life for her separate use, and without power of anticipation), Forms No. 62 *and* 63;

Trusts as to capital for issue as she shall appoint; in default, for children equally, as to sons who attain twenty-

WILLS. No. XLV.

one, and as to daughters who attain that age or marry; with hotchpot clause, Form No. 64;

Advancement clause, Form No. 65;

Settlement of daughters' shares, with power for them to appoint life interests to surviving husbands, Forms Nos. 66, 67, *and* 70;

Declaration that any sum paid or settled by testator on the marriage of daughters be taken into account, Form No. 71].

Ultimate gift of residue.

SUBJECT to the trusts and powers hereinbefore contained or referred to I direct that the trust fund and the income thereof, and all statutory accumulations of income (if any), or so much thereof respectively as shall not have become vested or been applied pursuant to this my will, shall be held in trust for absolutely.

[*Power for trustees to value and apportion mixed funds, adapt Form No.* 43].

Power to appoint new trustees.

I DECLARE that my wife during her life shall have power to appoint a new trustee or new trustees of my will.

Attestation clause.

In witness whereof I have hereunto set my hand.

[*Attestation clause, Form No.* 72.]

What provisions of C. A. incorporated in this precedent.

The provisions of the C. A. incorporated in this precedent are the same as those incorporated in Precedent XXXI. (see note to that precedent, p. 236, *ante*), except the implied covenants, and with the addition of s. 30, which renders unnecessary the devise of trust and mortgage estates.

SECT. VIII.

MISCELLANEOUS PRECEDENTS.

ENLARGEMENT INTO A FEE of the LONG TERM assigned by Precedent XIV. by declaration of the TENANT FOR LIFE of settled estates.

THIS INDENTURE made the day of 18 , between H. D. of &c. [*tenant for life*], of the one part, and E. L. of &c., and L. P. of &c. [*trustees*], of the other part, supplemental to an indenture of conveyance dated &c., and made between &c., hereinafter called the principal deed [*Preced. XIV.*] (*a*). Parties.

Whereas the said H. D. is now tenant for life in possession under the will recited in the principal deed of E. G. D. deceased, and beneficially entitled in right of the term of one thousand years created by the indenture of the 1st day of June, 1651, also recited in the principal deed, to the possession of the lands and hereditaments comprised in that term, and by the principal deed conveyed to the said E. L. and L. P. for the residue of that term as trustees and upon the trusts of the said will: Recital that H. D. is tenant for life:

And whereas there has been no tenant in tail under the limitations of the said will who has attained the age of twenty-one years. no tenant in tail attained twenty-one.

NOW THIS INDENTURE WITNESSETH that the said H. D., as the person so beneficially entitled, hereby declares that from and after the execution of these presents the said term of one thousand years shall be and the same is hereby enlarged into a fee simple. First testatum.

AND THIS INDENTURE ALSO WITNESSETH that for settling the said fee simple so acquired by enlargement in the manner in which the same is liable to be settled, the said E. L. and L. P., as such trustees as aforesaid, hereby convey unto the said H. D. all the lands and Second testatum. Settlement of fee simple.

(*a*) If the term is settled by settlement the deed enlarging it will be described as supplemental to the settlement.

ENLARGEMENT OF LONG TERMS.
No. XLVI.

hereditaments which by the principal deed were assigned to the said E. L. and L. P. for the residue of the said term of one thousand years, and which under the declaration hereinbefore contained have become vested in them for an estate in fee simple, TO HOLD unto the said H. D. in fee simple, TO THE USES, upon the trusts, and subject to the powers and provisions by the will and codicils of the said E. G. D. deceased declared and now subsisting concerning the hereditaments in England and Wales devised by the said will and the codicils thereto (*a*). In witness &c.

No. XLVII.

ENLARGEMENT OF A LONG TERM INTO A FEE BY EXECUTORS of deceased owner, as to PART of the demised property.

TO ALL TO WHOM THESE PRESENTS SHALL COME, X. of &c., and Y. of &c., send greeting:

Recitals. That deed supplemental to assignment to testator.

WHEREAS these presents are supplemental to an indenture hereinafter called the principal indenture dated &c., and made between M. of the one part and A. B. (since deceased) of the other part, whereby All those &c [*short description*] were assigned to the said A. B. for the residue of a term of 500 years created therein, and also in other land and hereditaments by an indenture of lease dated &c. and made &c., at a peppercorn rent payable in respect of all the demised premises:

Death of testator and appointment of executors.

AND WHEREAS the said A. B. died on &c., 1881, being at his death entitled to the premises comprised in the principal indenture for the residue of the said term, and having by his will dated &c., 1880, appointed the said

---

(*a*) If a tenant in tail has attained twenty-one, the last witnessing part should be omitted. He may have made a mortgage or conveyance of the leaseholds which might ultimately entitle the mortgagee or some other person to a conveyance of the fee (see C. A. s. 65 (5)). Consequently the trustees should not in that case part with the fee, at least unless they are satisfied that the tenant in tail has not dealt with his equitable interest in the term.

X. and Y. executors thereof who proved the same in the District Probate Registry on &c., And the said term of 500 years is now vested in the said X. and Y. as the personal representatives of the said A. B. so far as regards the said premises comprised in the principal indenture [*add if so subject*], Subject to the incumbrances affecting the same:

ENLARGEMENT OF LONG TERMS. No. XLVII.

NOW THESE PRESENTS WITNESS that the said X. and Y. as such personal representatives as aforesaid do and each of them doth hereby declare that from and after the execution hereof the said term of 500 years, as far as regards the land and hereditaments comprised in the principal indenture, shall be and the same is hereby enlarged into a fee simple.

Testatum.

In witness, &c.

The executors take in that character under s. 65 (4) of the C. A. the like powers of selling and conveying the fee simple acquired by the deed in the text, as they had as executors of selling and assigning the term previous to its enlargement.

DISENTAILING ASSURANCE of Land, and Money and Stock subject to be laid out in land to be settled.

No. XLVIII. DISENTAILING DEED.

THIS INDENTURE made the day of 18 , between A. F. B. of &c. [*tenant for life*], of the first part, R. G. B., eldest son of the said A. F. B. [*tenant in tail*], of the second part, and T. L. of &c., of the third part:

Parties.

Whereas by an indenture of settlement dated &c., and made between &c., the manor, park, and mansion of P. in the county of D., the advowson of T., and the impropriate rectory of M. in the same county, and the other lands and hereditaments in the same county in the indenture now in recital mentioned, were by the said W. B. and A. F. B. appointed and conveyed, and also by the said Mary B. (for the purpose of surrendering a jointure rentcharge charged thereon in her favour) released subject to the several incumbrances mentioned in the schedule to the indenture now in recital to affect the

Recital of settlement.

DISENTAILING DEED. No. XLVIII.

premises or parts thereof, but freed from the said jointure rentcharge and from all powers vested in the said W. B. under an indenture of settlement therein recited, To the use of the said C. G. for the term of one thousand years without impeachment of waste, upon trusts which have since been satisfied, and subject thereto and to rentcharges limited to the said A. F. B. during the joint lives of himself and the said W. B., and to a term for securing the same, To the use of the said D. F. for the term of one hundred years if the said W. B. should so long live, without impeachment of waste, upon certain trusts hereinafter declared and since satisfied, with remainder To the use of the said W. B. during his life, with remainder (subject to a jointure rentcharge to the said Mary B. for her life if she should survive the said W. B., which has now ceased by her death, and to a term for securing the same) To the use of the said A. F. B. during his life without impeachment of waste, with remainder To the use of the first and other sons of the said A. F. B. successively in tail male, with remainders over: And the said indenture contained powers for the said A. F. B. to charge a jointure and also portions for his younger children which have been partially exercised, and powers to create other charges on the said hereditaments thereby assured, including a power to raise money by mortgage to be applied in the purchase of lands and hereditaments to be conveyed to the uses declared by the said indenture concerning the hereditaments thereby conveyed: And a power of sale and exchange was thereby given to the said D. F. and W. D: And the said indenture contained a direction that the money arising by any sale or exchange should be laid out in the purchase of other hereditaments to be conveyed and settled to the uses declared by the indenture now in recital concerning the lands and hereditaments thereby conveyed and settled:

Marriage of tenant for life.

And whereas in the said month of &c., and after the execution of the aforesaid settlement, the said A. F. B. married Jane S., and there has been issue of the said marriage an eldest son, the said R. G. B., who attained

his age of twenty-one years on &c., and two other children:

And whereas the said W. B. died on &c., and the said Mary B., his wife, died on &c.:

Birth of tenant in tail.

Death of first tenant for life and jointress.

And whereas the Corporation of M. under an Act of Parliament enabling them, and incorporating the Lands Clauses Consolidation Act, required and took for the purposes of their said Act certain lands and hereditaments, part of the hereditaments comprised in the said settlement, and the purchase-money for the same, amounting to £ , was paid into Court under the Lands Clauses Consolidation Act, and invested in Consolidated £3 per cent. Annuities, part of which has since been sold and the proceeds have been invested in the purchase of lands and hereditaments, which have been duly conveyed to the uses of the said recited settlement, and there is now standing in the name of the Chancery Paymaster to the credit of Ex parte &c., a balance of £ Consolidated £3 per cent. Annuities:

Sale and payment into Court.

Sales under power.

And whereas divers sales have been made under the power of sale contained in the said recited settlement, and with the money arising thereby, and with money raised for the purpose under the power contained in the said settlement, other lands and hereditaments have been purchased and conveyed to the uses of the said settlement, and there now remains in the hands of the said D. F. and W. D., as trustees of the power of sale and exchange contained in the said settlement, the sum of £ liable to be invested in the purchase of land to be settled to the uses of the said settlement:

And whereas the said A. F. B. and R. G. B. are desirous of executing such disentailing assurance as hereinafter contained.

First testatum.

Conveyance of freeholds.

NOW THIS INDENTURE WITNESSETH that in consideration of the premises the said R. G. B. (with the consent of the said A. F. B. as protector of the settlement testified by his executing these presents) hereby conveys and disposes of, and the said A. F. B. also conveys, releases, and confirms unto the said T. L.,

DISENTAILING DEED. No. XLVIII.

Parcels. ALL the manors, reputed manors, advowsons, rectories, messuages, lands, tithes, rentcharges in lieu of tithes, and other hereditaments comprised in and expressed to be assured by the hereinbefore recited settlement (*a*), or which by purchase, exchange, allotment, or by any other means have become and are now subject to the subsisting limitations of the same settlement:

Habendum. TO HOLD unto the said T. L. in fee simple, Subject (exclusively and in exoneration of the moneys, stocks, funds, and securities hereinafter mentioned and assigned (*b*)) to the said jointure rentcharge charged on the said premises in favour of the said Jane B., wife of the said A. F. B., and to the sum raisable for portions for her younger children by the said A. F. B., and to the terms of years and other securities for raising the said jointure and portions, and also Subject to such of the incumbrances mentioned in the schedule to the said recited settlement as now remain undischarged, and to the incumbrances created under the powers of the said settlement and now subsisting, But freed from the life estate of the said A. F. B. under the said settlement, and all powers of charging and other powers annexed to or exerciseable during the continuance of such life estate, and also freed from the estate in tail male of the said R. G. B. under the said settlement, and all other estates in tail male or in tail (if any) of the said R. G. B. or the said A. F. B., and all estates, rights, interests, and powers to take effect after the determination or in defeazance of such estates in tail male or in tail or any of them:

Uses. TO SUCH USES, upon such trusts, and in such manner generally as the said A. F. B. and R. G. B. shall from time to time or at any time by any deed or deeds revocable

---

(*a*) A disentailing deed need not contain any description of the property, in fact it is better omitted, as the cost of enrolment is increased, and also useful information is given facilitating loans to the son on his reversion without the consent of the father.

(*b*) The estates being large and personal funds small, this exoneration enables the Court and the trustees to part with these funds safely and properly notwithstanding the charge of jointure and portions.

or irrevocable jointly appoint, and in default of and until and subject to any such appointment TO THE USES, upon the trusts, and subject to the powers and provisions which immediately before the execution of these presents were subsisting with reference to the said premises hereby conveyed.

2nd testatum. Assignment of personalty.

AND THIS INDENTURE ALSO WITNESSETH that in consideration of the premises the said R. G. B. (with the consent of the said A. F. B. as protector of the settlement testified as aforesaid) hereby assigns and disposes of, and the said A. F. B. also assigns, releases, and confirms unto the said T. L.

Parcels.

ALL that the said sum of £ sterling now in the hands of the said D. F. and W. D. as trustees of the power of sale and exchange contained in the said settlement, And also all that the said sum of £ Consolidated £3 per cent. Annuities now standing in the name of the Chancery Paymaster to the credit of Ex parte &c., and all other, if any, the moneys, stocks, funds, and securities which, or the produce of which, are or is liable to be laid out in the purchase of lands and hereditaments to be conveyed and settled to the subsisting limitations of the said settlement:

Habendum.

TO HAVE AND RECEIVE the same unto the said T. L. discharged so far as may be from the jointure rentcharge of the said Jane S. and the portions for her younger children by the said A. F. B., and from the other incumbrances before mentioned, and so that the same may be charged exclusively on the hereditaments and premises hereinbefore conveyed, in exoneration of the moneys and premises hereinbefore assigned and freed from the life estate of the said A. F. B. under the said settlement, and all powers of charging and other powers annexed to or exerciseable during the continuance of such life estate, and also freed from the said estate in tail male of the said R. G. B. under the said settlement, and from all other estates in tail male or in tail (if any) of the said R. G. B. or the said A. F. B., and all estates, rights, interests, and powers to take effect after the determination or in

DISENTAILING DEED. No. XLVIII. — Trusts.

defeazance of such estates in tail male, or in tail, or any of them, and also freed from all liability to be invested in the purchase of lands or hereditaments, and so freed In trust for the said R. G. B. absolutely.

In witness &c.

No. XLIX.

ACTION by MORTGAGOR AGAINST MORTGAGEE FOR SALE of mortgaged property under C. A. ss. 5 and 25.

ENDORSEMENT ON WRIT.

ENDORSEMENT ON WRIT.

In the High Court of Justice.
Chancery Division.

Between A B. . . . . Plaintiff
and
C. D. . . . . Defendant.

The plaintiff's claim is as a person entitled to redeem to have an account taken of what is due on an indenture of mortgage made to the defendant dated the day of 18 , and to have the property comprised in the said mortgage sold by the Court.

MINUTES OF JUDGMENT.

SUGGESTED MINUTES OF JUDGMENT (*a*).

The Court being of opinion that a sale of the hereditaments comprised in the indenture of mortgage made to the defendant dated the day of 18 mentioned in the writ in this action will be fit and proper,

Let the plaintiff on or before the day of next pay into Court to the credit of this action "Defendant's Costs Account" the sum of £ to answer the costs of the defendant in this action, and in default of the plaintiff making such payment on or before the day aforesaid

Let this action thenceforth stand dismissed (*b*) out of this Court, with costs to be taxed &c., and the plaintiff is

---

(*a*) See note to C. A., s. 5, *ante* p. 18.

(*b*) If the plaintiff cannot pay the deposit he is not likely to pay the debt, and should not have commenced the action. It seems only fair that the mortgagee should then have foreclosure at once, or a short time to redeem might be allowed.

from thenceforth to stand absolutely debarred and foreclosed of and from all right of redemption, and all interest of and in the mortgaged hereditaments, but in case such payment should be made on or before the day aforesaid

Let the following account and inquiries be taken and made:—

1. An account of what is due to the defendant for principal and interest on his said mortgage, and for his costs of this action, such costs to be taxed &c.

2. An inquiry what incumbrances (if any) other than the said indenture of mortgage affect the premises comprised in such indenture, or any and what part or parts thereof, and what sum is due for principal, interest, and costs in respect of each such incumbrance, and to whom each such sum is due.

3. An inquiry whether the money secured by any and which of such incumbrances other than aforesaid was lent upon any special contract, or for any and what term which has not yet expired.

4. An inquiry what is the sum required to be paid into Court to answer each such incumbrance having priority to the defendant's mortgage, in order to effect the discharge of the mortgaged premises therefrom under the 5th section of the Conveyancing and Law of Property Act, 1881, and what is the total amount of all the sums required to be so paid. And let the plaintiff serve each such incumbrancer with notice of the proceedings on this inquiry, and let each such incumbrancer be at liberty to attend the proceedings on this inquiry, and to add his costs of such attendance to the amount due on his security (*a*).

5. An inquiry whether there are any incumbrances on the said premises subsequent in order of priority to the mortgage to the defendant, and what are the priorities of such subsequent incumbrances (if any).

(*a*) An inquiry as to priority of incumbrances seems not required, as the sale cannot be made unless money is provided to pay all the prior incumbrancers, and then no question as to priority arises.

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